period, an adverse or negative comment, or written notice of intent to submit an adverse or negative 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.

Agency Findings

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not controversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) as the anticipated impact of this proposal is minimal, preparation of a Regulatory Evaluation is not necessary.

Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the specified closing date for comments will be considered, and this rule may be amended or withdrawn in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action may be needed.

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ASO–28.'' The postcard will be date stamped and returned to the commenter.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. Amend paragraph 2004 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 2004—Jet Routes

* * * * *

J–66 [Revised]

From Newman, TX; via Big Spring, TX; Abilene, TX; Ranger, TX; Bonham, TX; Little Rock, AR; Memphis, TN; INT Memphis 100° and Rome, GA 284° radials; to Rome.

* * * * *

Issued in Washington, DC, on May 28, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–14881 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 970703166–8129–03; I.D. 060997A]

RIN 0648–AH65

Fisheries of the Exclusive Economic Zone off Alaska; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that would implement part of Amendment 39 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and part of Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI). These regulations implement administrative revisions and the catch monitoring and accounting requirements for the Multispecies Community Development Quota (MS CDQ) Program.

DATES: Effective July 6, 1998 except for §§ 679.5(n), 679.30(a)(5)(i)(A)(*2*), and 679.32(c)(4)(i) which are not effective until the Office of Management and Budget approves the information collection requirement contained in those sections. NMFS will publish a document in the **Federal Register** announcing the effective date for those sections. Community Development Plans (CDPs) for the MS CDQ Program for the 1998 through 2000 CDP cycle must be submitted to NMFS by July 7, 1998. Fishing under the approved multispecies groundfish CDPs is authorized to begin on October 1, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the BSAI in the EEZ are managed by NMFS pursuant to the fishery management plans (FMPs) for groundfish in the respective

management areas. The commercial king crab and Tanner crab fisheries in the BS/AI are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and are implemented by regulations for U.S. fisheries at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On August 15, 1997, NMFS published a proposed rule to implement the MS CDQ Program and the Groundfish and Crab License Limitation Program (LLP) (62 FR 43866). This proposed rule contained a description of, and rationale for, the MS CDQ Program. Public comment on the proposed rule was invited through September 29, 1997. Thirty-six letters of comment about the MS CDQ portion of the proposed rule were received and are addressed in the following Response to Comments section. Additionally, the Response to Comments section addresses comments about the MS CDQ Program requirements that were received in response to the proposed rule for the at-sea scales program published on June 16, 1997 (62 FR 32564). The final rule implementing the performance and technical requirements for at-sea scales was published on February 4, 1998 (63 FR 5836).

Because of the size and complexity of the final rule to implement the MS CDQ and LLP Programs, the need to respond to the large number of public comments received, and the need to respond to time critical events in the fishery, the LLP and MS CDQ programs are being implemented by means of three separate final rule documents. The first of these final rules was published on February 19, 1998 (63 FR 8356) and implemented the multispecies groundfish and crab CDQ reserves and closure of the Southeast Outside District of the GOA to fishing with trawl gear. The CDQ reserves had to be implemented early in 1998 in order to allocate groundfish, prohibited species, and crab to the MS CDQ Program for CDQ fishing in 1998.

This final rule is the second of the three final rules implementing the MS CDQ and LLP Programs. It implements revisions to the administrative regulations and new catch monitoring regulations for the MS CDQ fisheries.

Response to Comments

Comments on Program Implementation

Comment 1: Does NMFS have adequate funding and manpower to implement the many obligations that it imposes upon itself with the proposed MS CDQ Program?

Response: NMFS' Alaska Region has obtained approval for the funding and additional staff necessary to implement the MS CDQ Program.

Comment 2: The proposed regulations for combining vessels and processors participating in the groundfish and halibut CDQ fisheries under one set of regulations are burdensome for participants in the halibut CDQ fishery, do not consider the differences between the groundfish fisheries and the halibut fisheries, and generate information not worth the additional effort and cost to the CDQ participants or NMFS. Specifically, requirements for CDQ observers in shoreside processors taking deliveries of halibut CDQ, retention and delivery of all groundfish CDQ species by small vessels, CDQ check-in/check-out reports for all vessels, and weekly summaries of the catch by all vessels are not necessary for the halibut CDQ fisheries.

Response: NMFS agrees that differences exist between the small vessel halibut CDQ fisheries and the other groundfish CDQ fisheries, including fixed gear sablefish. In 1997, 1,884,000 lb (854 mt) of halibut CDQ was allocated to six CDQ groups. At least 75 percent of the 1997 catch was landed by small boats and skiffs under 32 ft (9.73 m) length overall (LOA) at about 10 small shoreside processors or at buying stations in Western Alaska villages. These processors do not submit other landing reports to NMFS and are not required to have observer coverage. In contrast, NMFS expects that most of the groundfish CDQ will be harvested by catcher/processors or large catcher vessels delivering to large groundfish shoreside processing plants.

In the proposed rule, NMFS proposed to consolidate all of the CDQ fisheries that would be managed by NMFS under one set of monitoring and catch accounting regulations to implement the Council's and NMFS' intent that all catch in the groundfish and halibut CDQ fisheries be accounted for by a CDQ allocation. Although NMFS proposed different observer coverage, equipment, and reporting requirements for different size and gear type vessels, no distinction was made between the requirements for vessels of the same size fishing in the halibut CDQ fisheries or fishing in the groundfish CDQ fisheries.

However, based on public comment, NMFS has determined that the differences between the small-scale halibut CDQ fisheries and the larger-scale groundfish CDQ fisheries warrant consideration of different catch monitoring and CDQ accounting regulations. Therefore, in this final rule, NMFS revises part 679 as follows:

1. Three new definitions are added in § 679.2 to distinguish between the three separate CDQ fisheries that will be managed in 1998. These definitions will be effective only for 1998 and will be removed or revised in future rulemaking.

a. *Fixed gear sablefish and halibut CDQ fishing* means fishing with fixed gear by an eligible vessel listed on an approved Community Development Plan (CDP) that results in the catch of any halibut CDQ or in the catch of any sablefish CDQ that accrues against the fixed gear sablefish CDQ reserve.

b. *Pollock CDQ fishing* means fishing with pelagic trawl gear by an eligible vessel listed on an approved CDP that results in the catch of pollock that accrues against the CDQ group's allocation of pollock CDQ.

c. *Groundfish CDQ fishing* means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or prohibited species quota (PSQ) species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ.

2. In § 679.32(a), the reference to the halibut CDQ fisheries in the first sentence of the applicability paragraph is removed. The sentence now reads ''for all CDQ and PSQ caught while groundfish CDQ fishing as defined at § 679.2'' instead of ''in the groundfish or halibut CDQ fisheries * * *.''

No significant changes are made with the final rule to state how the small vessel halibut CDQ fishery will be managed in 1999 and thereafter because NMFS plans to solicit Council and public input before developing such measures. NMFS will publish rulemaking prior to December 31, 1998, to remove the sections with sunset dates at §§ 679.2, 679.32(a)(2) and (3), and 679.32(e) and (f). This future rulemaking will combine the catch accounting regulations for pollock CDQ fishing and fixed gear sablefish CDQ fishing with the multispecies groundfish CDQ fisheries managed under § 679.32 (a) through (d). At that time, NMFS will consider whether the small vessel halibut CDQ fisheries that deliver halibut CDQ to Western Alaska villages should be managed under different regulations than those under the groundfish CDQ fisheries. Council and public comment will be requested on any proposed changes to the current regulations.

Comments on CDQ Administration

Comment 3: The preamble to the proposed rule states that a CDQ group has a fiduciary responsibility to manage

CDQ assets in the best interests of the CDQ communities. This statement conflicts with corporate law because, under corporate law, board members have a fiduciary responsibility to the corporation, not to the individual shareholders. The obligation of the CDQ groups to operate on behalf of the member communities is already enunciated throughout the CDP and the allocation process.

Response: As do directors of other corporate entities, the board of directors of a CDQ group has primary fiduciary responsibility to the CDQ group corporation. However, the CDQ group corporation exists solely to serve the interests of the member communities as a whole. When a CDQ group does not serve the interests of the member communities as a whole, the CDQ group should be dissolved, and a new CDQ group should take its place. The interests of the member communities should be expressed in the CDP. If a CDQ group meets the milestones and goals of an approved CDP, the interests of the member communities will likely be realized. If a CDQ group does not follow its CDP and does not meet its milestones and goals, the CDQ group is likely not operating in the best interests of the member communities. No change to the regulations is required because this topic was discussed only in the preamble to the proposed rule.

Comment 4: The preamble to the proposed rule states that the communities have the opportunity to review the activities of the board members and the CDQ group, which implies access to confidential data. An ''open book'' policy would have a chilling effect on the CDQ group's ability to operate successful businesses.

Response: Any member of the public may request information about a CDQ group from NMFS. If NMFS determines that the requested information is not confidential and would not result in substantial competitive harm, NMFS will release that information to the public.

Comment 5: Members of the board of directors of a CDQ group should not be required to be elected by community members as proposed at § 679.30(a)(2)(iv). Board members are volunteers. Community elections of board members would require expenditure for advertisement and other election expenses and would discourage the most qualified from serving. NMFS should not remove the existing regulation that requires the board of directors to include one member from each community. Finally, the definition of ''qualified applicant'' should be revised to explain that board members may be elected by a community-wide election, by the local fishermen's organization's membership, or by the CDQ community's governing body.

Response: NMFS concurs. The requirement in the proposed rule in § 679.30(a)(2)(iv) that ''[i]f a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member elected in an at-large election by his or her community, for each community in the CDQ group.'' is changed to read, ''[i]f a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.'' NMFS notes that CDQ board members are not volunteers and are usually paid an honorarium for their participation.

Comment 6: The information about the board of directors in section § 679.30(a)(2)(iv) under the Managing Organization Information should be placed in the definition for ''qualified applicant'' in the definitions section at § 679.2. Such a change would be an improvement because the board of directors constitutes a part of the qualified applicant and not a part of the managing organization.

Response: The information about the board of directors must remain in § 679.30(a) because all information required to be in a proposed CDP must be in this section. NMFS recognizes that paragraph (a)(2)(iv) is located in a section that describes managing organization information. However, no other location exists in § 679.30(a) for the board of directors information that is more acceptable than the current location.

Comment 7: NMFS should substitute the word ''approved'' for ''effective'' in the definition of a CDQ group because the word ''effective'' is not clear.

Response: NMFS concurs that the word ''effective'' is unclear and changes the definition of a ''CDQ group'' in § 679.2 from ''a qualified applicant with an effective CDP'' to ''a qualified applicant with an approved CDP.''

Comment 8: NMFS should make the information requirements for a proposed CDP consistent with the State of Alaska's requirements.

Response: NMFS, as the Federal agency responsible for implementing the CDQ program, requires that the information requested in § 670.30(a) be included in the proposed CDPs. The State of Alaska, as the initial recipient of the proposed CDPs, may request the CDQ groups to provide additional information in the proposed CDPs, or may request the CDQ groups to provide the proposed CDP information in a particular format, as long as the State requirements do not conflict with the Federal requirements.

Comment 9: The proposed CDQ regulations require a transition plan that includes a schedule for transition from reliance on quota allocations to self sufficiency in fisheries for each CDQ project. A transition plan for each CDQ project would be cumbersome and not very meaningful. A better transition plan would be one that estimates the impact on all CDQ group activities and the long-term revenue stream in the event that CDQ allocations cease.

Response: NMFS concurs. The regulations are changed at § 679.30(a)(6)(i) to define a transition plan as an overall schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries, based on the CDQ group's long-term revenue stream without CDQs.

Comment 10: NMFS should eliminate the requirement to revise the general CDP budget to reflect the annual budget reconciliation report (§ 679.30(g)(3)). The obligation to prepare a final general CDP budget, particularly since it will be months after the year end, is unnecessary for the full disclosure of annual financial operations.

Response: NMFS concurs. The CDQ regulations are changed at § 679.30(g)(3) to remove the requirement that the general CDP budget be revised to reflect the annual budget reconciliation.

Comment 11: Section 679.30(g)(4)(iv)(B) is not clear about whether halibut catcher vessels are considered ''CDQ partners.'' If NMFS considers that halibut catcher vessels are CDQ partners, then a full substantial amendment will be required to add or remove a vessel from a CDP. NMFS should make the CDQ regulations clear that a halibut catcher boat can be added to a CDP with a technical amendment.

Rseponse: NMFS does not have a definition of ''CDQ partner'' in the CDQ regulations. Vessels may be added or removed from a CDP with a technical amendment, except that a substantial amendment must be used to add a vessel to a CDP if the CDQ group is proposing an alternative catch estimation method under § 679.30(a)(5)(iii) (see further discussion under Changes from the Proposed Rule, item #8). However, if a CDQ group wants to add a vessel from a company that does not have a business relationship with the CDQ group (a new harvesting partner), the CDQ group may want to draft and sign a contract with the new harvesting partner to make clear the responsibilities of each party

during CDQ operations. Signing a new contract with a new harvesting partner requires a substantial amendment in most cases. Also, some vessels under the MS CDQ Program have equipment and operational requirements that must be met before they can be added to the list of eligible CDQ vessels. The CDQ group must ensure that any vessel that it adds to its list of eligible CDP vessels with a technical amendment has met the equipment and operational requirements of the CDQ regulations.

Comment 12: NMFS should require the State of Alaska to establish a separate panel or committee to review CDPs and make objective decisions regarding CDQ and PSQ allocations. An independent panel would be better suited to make good allocation decisions without being influenced by political pressures.

Response: The State is authorized to make recommendations to NMFS regarding the approval of proposed CDPs and CDQ/PSQ allocations. NMFS requires that the State hold public hearings on the CDQ applications and consult with the Council about its recommendations. The public has the opportunity to comment on the State's process and recommendations in an open forum at both of these meetings. NMFS reviews the State's written recommendations and the administrative record from the public hearings before making a final decision to approve or disapprove the State's recommended CDQ allocations. Therefore, at this time NMFS does not believe there is a need for further requirements about how the State makes CDQ allocation decisions.

Comment 13: NMFS should change the date for the transmittal of proposed CDPs from the State to NMFS from October 7 to October 15 to give the State additional time if it is necessary to revise CDPs after the September Council meeting.

Response: NMFS concurs and revises § 679.30(d) to change the transmittal date for proposed CDPs from October 7 to October 15.

Comment 14: The proposed regulations would remove § 679.30(f) of current CDQ regulations that provides for the suspension or termination of a CDP. NMFS should re-insert this language. It is a necessary management tool.

Response: The final rule includes a portion of the language from § 679.30(f) of the current CDQ regulations in the final rule as § 679.30(h). Also, NMFS is planning to promulgate additional regulations clarifying the process for suspending or terminating a CDP. Other portions of the current regulations are not included in the final rule because civil procedure regulations at 15 CFR part 904 already provide a system for prosecuting violations of MS CDQ regulations.

Comments on CDQ Allocations and Transfers

Comment 15: NMFS should clarify what activity is prohibited in the proposed rule at § 679.7(d)(15), which stated ''for a catcher vessel, catch, retain on board or deliver CDQ groundfish or halibut together with non-CDQ groundfish or halibut, except that IFQ sablefish and halibut may be caught, retained, or delivered together with CDQ groundfish and halibut by vessels using fixed gear.''

Response: Section 679.7(d)(15) in the proposed rule is now § 679.7(d)(13) in the final rule. This section applies only to catcher vessels participating in the groundfish CDQ fisheries. Operators of these catcher vessels are prohibited from catching, retaining on board, or delivering groundfish CDQ or halibut CDQ together with non-CDQ groundfish, with one exception: Catcher vessels using fixed gear are allowed to catch, retain on board, and deliver Individual Fishing Quota Program (IFQ) sablefish and IFQ halibut together with groundfish CDQ and halibut CDQ. This prohibition is necessary for catcher vessels to account for all catch during a CDQ fishing trip with CDQ, PSQ, or IFQ. Failure to prohibit this activity would allow catcher vessels fishing in the CDQ fisheries to attribute some of their catch against the moratorium groundfish fishery allocations of total allowable catch (TAC) amounts, which would be contrary to the Council's and NMFS' intent.

This prohibition can be stated more clearly by using the definition of moratorium groundfish species in existing regulations. Therefore, the prohibition is revised to read: ''for the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with moratorium groundfish species.'' NMFS is also adding to this final rule a prohibition against catcher/processors catching groundfish CDQ species together with moratorium groundfish species in the same haul, set, or pot.

Comment 16: In § 679.7(d)(16) of the proposed rule, NMFS proposed to prohibit catcher/processors and observed catcher vessels from (1) combining catch from more than one CDQ group in the same haul or set and (2) combining CDQ and IFQ in the same haul or set. NMFS received comments opposed to this proposal by CDQ groups that have purchased halibut IFQ to fish together with their CDQ allocations. The halibut IFQ would be used by CDQ groups to retain halibut in their fixed gear groundfish CDQ fisheries.

NMFS also received comments opposed to the prohibition against combining catch from more than one CDQ group in a haul, set, or delivery from CDQ groups. Commenters state that this restriction would limit the CDQ groups' ability to fully harvest their CDQ allocations and would create difficulties in managing small CDQs. Furthermore, NMFS currently allows this practice in the existing CDQ programs.

Response: Section 679.7(d)(16) of the proposed rule is now § 679.7(d)(15) in the final rule. NMFS has not changed this section in the final rule in response to these comments for the following reasons:

Allowing catch from the same haul or set to be split among two or more CDQ groups would allow de facto transfers to occur outside the established procedure for State and NMFS review and approval of transfers. For example, the final rule requires that PSQ may be transferred only in combination with CDQ and only during the month of January. However, if splitting hauls or sets were allowed, one CDQ group could claim the CDQ species in a haul or set and another CDQ group could claim the PSQ species. Although this would not be an actual transfer of PSQ from one group to another, it would allow a CDQ group to catch CDQ even if it had no PSQ remaining to support its groundfish CDQ fisheries. NMFS believes that the question of allowing split hauls or sets should be more thoroughly analyzed and considered by the Council before making a change in the regulations.

NMFS also has declined to change the final rule to allow vessel operators to catch CDQ and IFQ species in the same set because of the significant increase in the complexity of the catch monitoring and recordkeeping and reporting requirements that would result. The catch of IFQ species is monitored on the basis of the vessel operator's report of retained catch weight made to NMFS Enforcement. Estimates based on observer data are not used for IFQ accounting. However, the catch of CDQ species will be determined based on the CDQ observer's estimate of total catch weight and species composition for each set. The vessel operator's reports of retained catch weight will not be used for CDQ catch accounting. This difference in the catch accounting occurs because only retained catch accrues against an IFQ account, while all catch (retained and discarded) accrues against a CDQ account. An

unacceptable level of complexity is added if the two different catch accounting methods have to be applied to catch in the same set of gear. Therefore, while vessel owners may catch IFQ and CDQ together in the same fishing trip, they will be prohibited from catching IFQ and CDQ in the same set of gear.

Comment 17: NMFS should continue to require that herring prohibited species bycatch be discarded from the vessel and should not require that the herring be retained until it is weighed on a scale. The herring PSQ is not a strict quota that will require trawl vessels fishing for a CDQ group to stop fishing altogether once it is attained. Rather, once the herring PSQ is reached, all trawl vessels fishing for the CDQ group would be required to stop fishing in the Herring Savings Areas (HSA) during certain times of the year. Therefore, the quota monitoring needs of the CDQ program are not great enough to warrant a change in retention requirements for herring PSQ. Implementation of this requirement would also require the State of Alaska to change regulations prohibiting the retention of herring.

Response: NMFS recommended retention of herring PSQ because observers on catcher vessels using trawl gear do not have the ability to estimate the weight of herring bycatch discarded at sea accurately enough for NMFS to enforce closures of the HSA once the herring PSQ is reached by a CDQ group. In addition, all herring bycatch by vessels using trawl gear is assumed to be dead after it is brought on board the vessel. However, NMFS recognizes that a change in State regulations is needed before NMFS could require retention and delivery of herring to an onshore plant and that this change is unlikely to occur prior to implementation of the MS CDQ Program. Therefore, NMFS has determined that the only option is not to allocate 7.5 percent of the herring prohibited species catch (PSC) limit to the MS CDQ fisheries, to accrue all herring bycatch by vessels using trawl gear in the MS CDQ fisheries to the overall herring PSC limit, and to require vessels fishing in MS CDQ fisheries to comply with closure of the HSAs once the herring PSC limit is reached. This final rule amends § 679.21(1)(i) to remove the herring PSQ reserve so that a 7.5-percent allocation of the herring PSC limit is not made to the CDQ fisheries. Additionally, the requirement for catcher vessels to retain herring PSQ is removed from § 679.32(c) and the prohibition against fishing in the HSAs once the herring PSQ is attained is removed. Finally, recordkeeping and reporting requirements and catch accounting requirements in §§ 679.5(n) and 679.32 are amended to remove references to the herring PSQ. Incorporation of the herring PSC limit into the MS CDQ fisheries may be considered by the Council and NMFS in a future rulemaking that would allow more time to resolve the conflict between State regulations and NMFS' catch accounting requirements.

Comment 18: CDQ groups should be restricted to pelagic trawl gear only in the 1998 pollock fishery because bycatch in the pollock CDQ fisheries will not accrue against the CDQ and PSQ allocations until 1999.

Response: NMFS agrees. The Council made this recommendation to NMFS at its meeting in April 1996, and the provision was not included in the proposed rule. NMFS adds the requirement into the final rule under the definition of pollock CDQ fishing in § 679.2 and in the prohibitions at § 679.7(d)(24).

Comment 19: If NMFS approves a CDP with a fishing plan that specifies a different procedure for determining CDQ catches, the CDQ group should be able to revert to NMFS' standard estimates by filing a letter of notification to the State with a copy to NMFS if an alternative, higher sampling frequency plan approved by NMFS is attempted but, for some reason, does not work out. The vessel should be authorized to act as the agent of the CDQ group so that immediate action could take place.

Response: A CDQ group could include this type of contingency plan in its proposed fishing plan for NMFS review. No change to the regulations appears to be necessary at this time.

Comment 20: In the preamble to the proposed rule, NMFS stated that a species or species group would be included in the CDQ program's non-specific reserve if the species was low valued, no target fishery currently existed, and a sufficient buffer existed between the TAC and ABC (Acceptable Biological Catch). Given the structure of the overfishing definition, which sets the squid overfishing limit (OFL) equal to the average historical catch, an adequate buffer does not exist; thus, this species should not be part of the non-specific reserve.

Response: The preamble of the proposed rule incorrectly stated the criteria for a species to be considered for the CDQ non-specific reserve. The criteria should have said ''sufficient buffer between the TAC and the overfishing limit'' rather than a ''sufficient buffer between TAC and ABC.'' In the 1998 specifications, neither squid nor the ''other species'' TAC category has a buffer between TAC and ABC because TAC is set equal to ABC. However, a buffer does exist between the TAC and the OFL.

Comment 21: The prohibition against exceeding a CDQ allocation is stricter than the moratorium groundfish fisheries and IFQ fisheries requirements. The CDQ groups will always have to undershoot their quotas and leave substantial amounts of all species unfished. The prohibition will probably limit the CDQ longline cod fishery and some of the trawl flatfish fisheries when no biological or economic rationale exists for doing so. Therefore, NMFS should allow the CDQ participants to discard a particular species once the CDQ is reached rather than require that no CDQ be exceeded. This would be similar to the ''PSC status'' that is allowed in the moratorium groundfish fisheries whereby NMFS places groundfish on PSC status once the TAC is reached.

Response: NMFS disagrees. NMFS approved a Council recommendation that results in an allocation of 7.5 percent of the groundfish TACs (except fixed gear sablefish) to the CDQ program. Allowing the CDQ fisheries to discard a particular species after its CDQ is reached could cause the overall CDQ program to exceed its 7.5-percent allocation. This would violate NMFS and Council intent for the CDQ program. The Council confirmed this intent at its April 1996 meeting. The only exception proposed by NMFS and accepted by the Council was the ''CDQ non-specific reserve.''

Comment 22: The CDQ non-specific reserve is inadequate. The squid bycatch could limit the pollock CDQ fisheries, and skate bycatch could limit the longline cod CDQ fishery. The ''other species'' TAC normally is not reached in the open access fisheries because a large percentage of the cod is taken with trawls with a lower skate bycatch. However, most cod CDQ will be taken with longline in order to reduce halibut bycatch mortality, resulting in more skate bycatch. Two recommendations were made. First, NMFS should not prohibit CDQ groups from exceeding CDQs for squid, arrowtooth flounder, and ''other species,'' all of which are bycatch species with no danger of becoming overfished and with little or no commercial value. Rather, once the CDQ is reached, these species should go on PSC status as they do in the open access fisheries. Second, NMFS should increase the percentage of the squid, arrowtooth flounder, and ''other species'' TACs apportioned from the CDQ reserve to the CDQ non-specific reserve from 15 percent to 50 percent.

Response: As proposed, the CDQ non-specific reserve provides a limited ability for the CDQ fisheries to exceed their 7.5-percent allocation of some species groups. However, NMFS will not increase the apportionment to the CDQ non-specific reserve or allow CDQ groups to exceed CDQs for the reasons stated above in the response to Comment 21.

Comment 23: CDQ groups should be allowed an overage allowance for target species that would come off the following year's quota as is allowed for the IFQ program.

Response: NMFS did not include overage or underage provisions for the CDQ program because none were recommended by the Council or requested by the State of Alaska CDQ program managers. In fact, yearly overages are prohibited as explained in the response to Comments 21 and 22. Underages were not addressed but should have been expected, given the prohibition on overages.

Comment 24: NMFS should allow CDQ groups to substitute halibut CDQ for halibut PSQ. If CDQ groups achieve bycatch savings of halibut PSQ, they should be allowed to harvest the savings as retainable halibut CDQ.

Response: NMFS disagrees. Substitution of halibut CDQ and halibut PSQ would be a significant change in the CDQ program design that NMFS would not make without a recommendation to do so from the Council after analysis and public comment.

Comment 25: NMFS should exempt unobserved halibut CDQ catcher vessels from the requirement to retain and weigh salmon and herring PSC and groundfish bycatch except cod and pollock, which must be retained under Improved Retention/Improved Utilization (IR/IU). The amounts involved are trivial in comparison with the groundfish fisheries overall, but the retention requirement will create a hardship for the small vessels.

Response: See response to Comment 2. NMFS will propose regulations for the small vessel halibut CDQ fisheries in a separate rulemaking.

Comment 26: The proposed rule states that target fishery categories and gear allocations will be dropped for halibut PSQ but is silent on whether the target fishery categories will be dropped for crab PSQs. Will crab PSQ allocations and use be the same as halibut PSQ?

Response: The target fishery designations for allocation of prohibited species bycatch in the moratorium groundfish fisheries will not be used in the CDQ fisheries. However, while the CDQ groups are simply prohibited from exceeding their halibut PSQ, the crab PSQ will be managed with the same time and area closures as the moratorium groundfish fisheries. Therefore, only the catch of crab in the trawl fisheries will accrue to the CDQ group's crab PSQs. The CDQ groups will be prohibited from using trawl gear to harvest groundfish CDQ in (1) Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained, (2) Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained, and (3) the *C. opilio* Bycatch Limitation Zone (COBLZ) after the CDQ group's PSQ for *C. opilio* Tanner crab PSQ is attained.

A prohibition against using trawl gear in the COBLZ is added. The new *C. opilio* bycatch limit and the COBLZ were added to 50 CFR part 679 (62 FR 66829, December 22, 1997) after the proposed rule for the MS CDQ Program was published.

Comment 27: The proposed constraints on transfer of PSQ and CDQ between CDQ groups are overly restrictive and will prevent the attainment of optimum yield (OY) because a group must cease fishing once any quota is reached and some of the quotas will be very small. CDQ groups need a more timely process for transferring CDQ in season.

In addition to several general comments suggesting more flexible transfer provisions, NMFS received the following specific recommendations:

1. NMFS should allow transfers of more than 10 percent of a group's CDQ and transfers of PSQ with a technical amendment rather than a substantial amendment. Requiring these transfers to undergo the substantial amendment process could result in ''considerable quantities of fish left on the table'' each year;

2. NMFS should allow transfers of 25 mt of CDQ, the equivalent percentage of CDQ allocation, or 10 percent of the CDQ allocation, whichever is greater, with a technical amendment;

3. NMFS should allow transfers of up to 2 percent of a group's PSQ by PSQ species without a concurrent transfer of CDQ and at any time during the year;

4. NMFS should allow submission of amendments to transfer PSQ allocations at any time during the year, and, upon approval, make such transfers effective in the following calendar year.

Response: NMFS included the transfer provisions and restrictions recommended by the Council and supported by the State of Alaska, which makes the original recommendations on CDQ allocations and reviews and approves all amendments to the CDPs before they are sent to NMFS for review and approval. The Council and the State believed that transfers of CDQ or PSQ allocations, transfers of more than 10 percent of a CDQ group's CDQ for any species or species group, or the transfer of PSQ should be made by substantial amendment in order to provide a more comprehensive and extended review of the proposed transfers. As a result, no significant change is made to the CDQ or PSQ transfer provisions set out in the proposed rule (see response to Comment 29).

Comment 28: NMFS received two recommendations on allowing transfers of CDQ and PSQ after an overage had occurred. The first recommendation was a general request to allow transfers after fish have been caught to cover overages. The second recommendation was to allow up to 2 percent of CDQs or PSQs to be transferred after fish have been harvested in the event that one group has a small overage and can transfer it to another group with an equivalent amount of unharvested CDQ. The rationale for the second recommendation was that it would limit the number of enforcement actions necessary for small overages while allowing a higher percentage of the quotas to be taken.

Response: NMFS disagrees and will make no provision for transfers to cover overages of CDQ and PSQ after that catch has occurred because this provision would undermine NMFS' ability to monitor and enforce requirements that CDQ groups not exceed their quotas.

Comment 29: NMFS should require transfers of CDQ allocations, PSQ allocations, CDQ, and PSQ to be in whole integer percentages or amounts to simplify the transfer process.

Response: NMFS agrees and has revised § 679.30(e) accordingly.

Comments on CDQ Recordkeeping and Reporting Requirements

Comment 30: In § 679.5(m) in the proposed rule, NMFS proposed requiring a CDQ representative to submit a check-in/check-out report for each vessel harvesting groundfish and halibut CDQ. NMFS received the following comments about the proposed requirement as it would have applied to catcher/processors and motherships. First, NMFS should allow catcher/processors and motherships to continue to submit the existing check-in and check-out reports required at § 679.5(h) because the proposed CDQ check-in/check-out reports duplicate this requirement. Second, NMFS should require that the check-in/check-out reports be submitted by the vessel operator to NMFS directly, rather than

to the CDQ representative. Submission directly to NMFS would save time and avoid the confusion that may arise from requiring the CDQ representative to be the intermediary between the vessels and NMFS. Third, NMFS should not require that the check-out report be received by NMFS before the vessel can deploy gear in a non-CDQ fishery because the time period between CDQ and non-CDQ fishing is less than an hour in some cases and because vessel operators have no way to determine whether NMFS has received the notification. Fourth, if NMFS continues to require that the check-out report be received before the vessel deploys gear in a non-CDQ fishery, then NMFS should consider allowing the vessel's fax confirmation report to verify receipt by NMFS or allow the submission of the check-out report by electronic mail.

Response: In the final rule, NMFS removed the requirement in §§ 679.5(m) and 679.32(e) of the proposed rule for CDQ check-in/check-out reports for catcher/processors, motherships, and catcher vessels. NMFS determined that the information about eligible vessels in the CDPs, observer coverage, and the existing check-in/check-out reports for processors is sufficient to monitor CDQ fishing activity.

Catcher/processors and motherships participating in the CDQ fisheries will continue to be required to submit the check-in/check-out report at § 679.5(h). NMFS revised the wording of § 679.5(h) to refer to fishing for CDQ species, rather than for each CDQ allocation. The operator of the catcher/processor or mothership is required to submit a check-in report prior to fishing for CDQ species and a check-out report within 24 hours after fishing for CDQ species has ceased. Vessels or processors must file separate check-in/check-out reports for each CDQ group number.

In the final rule, check-in/check-out reports are not required for catcher vessels although they may be considered in the future if measures in this final rule are not adequate.

Comment 31: The requirement for check-in/check-out reports for small catcher vessels in the halibut CDQ fishery is too burdensome because it would be too difficult for the CDQ representative to keep track of the many 18–32 ft (5.49–9.75 m) LOA vessels in short openings spread out over 14 communities and 25,000 square miles (64,750 square kilometers). This requirement would generate much paperwork that would not provide information worth the effort of the vessel owners, the CDQ representative, or NMFS. Two recommendations were received on the check-in/check-out requirement for the halibut CDQ fisheries. First, NMFS could require that the CDQ representative file one check-in report for all vessels at the beginning of the season and one check-out report at the end of the season for all vessels. Second, NMFS could require that check-in/check-out reports be submitted only by vessels over a minimum size of 30 ft (9.14 m).

Response: The final rule has been changed to remove the requirement for CDQ check-in/check-out reports. See response to Comment 30.

Comment 32: The proposed requirement to submit a CDQ catch report for each vessel each week that CDQ fishing occurs is excessive for small vessels fishing for halibut CDQ. NMFS might consider combining skiffs under a CDQ permit into a CDQ group fleet catch report.

Response: See response to Comment 2. In 1998, vessels participating in the halibut CDQ fisheries will continue to submit reports to NMFS Enforcement under the IFQ program. CDQ representatives are not required to submit information about halibut CDQ reported under the IFQ program reporting requirements on the CDQ catch report in 1998.

Comment 33: NMFS should use the shoreside processor's weekly production report (WPR) as a weekly report of CDQ catch.

Response: NMFS requires information about the weight and numbers of all CDQ and PSQ species landed by each vessel fishing under a CDP. The shoreside processor's WPR provides the total CDQ and PSQ landed by all vessels fishing under a CDP each week, but it does not provide detail for the individual vessel's landed catch. In addition, the CDQ catch report is required to be submitted by the CDQ representative on behalf of the CDQ group that has received the groundfish CDQ allocation. The report must be signed and submitted by the CDQ representative to verify to NMFS that the CDQ group acknowledges the CDQ and PSQ catch made by vessels and processors under its CDP.

Comment 34: In § 679.32 of the proposed rule, NMFS proposed to use the Alaska Department of Fish and Game (ADF&G) fish ticket as a record of the catch weight and numbers for CDQ and PSQ landed at shoreside processors. However, ADF&G fish tickets are not designed to report halibut PSQ discarded at sea.

Response: The final rule contains a change in this requirement. Rather than using an ADF&G fish ticket, each shoreside processor must submit a CDQ delivery report for each delivery of CDQ and PSQ. NMFS determined that ADF&G fish tickets would not provide adequate landings records for several reasons. First, ADF&G fish tickets are used primarily to report the weight of fish purchased by the processor and are less reliable for documenting the weights of fish that are delivered but not purchased either due to economic reasons or for being prohibited species. Second, ADF&G fish tickets are not available to NMFS soon enough to be used to monitor landings in-season. Finally, NMFS requires information about each CDQ delivery to link with the observer report from the same delivery so that information about at-sea discards of CDQ and PSQ can be quickly and accurately combined with delivery information from the processor.

As a result of these comments, the following changes have been made in this final rule:

1. The requirements for the CDQ delivery report are added to § 679.5(n)(1). A CDQ delivery report is required to be submitted by shoreside processors for each groundfish CDQ delivery. The processor must include the vessel's CDQ delivery number on the CDQ delivery report.

2. In § 679.32(c), the ADF&G fish ticket is removed as one of NMFS' standard sources of data for deliveries to shoreside processors.

Comment 35: If CDQ groups are required to report information about vessels fishing under their CDPs, NMFS should extend the reporting deadline from 24 to 48 hours after the vessel reporting deadline to allow time for information to get from the vessel to the CDQ group and to NMFS.

Response: NMFS changed the deadline for receipt of the CDQ catch report § 679.5(n)(2) to ''within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, buying station, or mothership or within 7 days of the date gear used to catch CDQ was retrieved for catcher/processors.'' This change should allow the CDQ groups sufficient time to get information from the processor or vessel reports if it is needed, although NMFS expects that most data used by the CDQ representative will come from observer reports rather than from vessel or processor reports submitted to NMFS.

Comment 36: NMFS should require that the catch of halibut and sablefish CDQ be reported in pounds, rather than to the nearest 0.001 mt.

Response: Currently, halibut and sablefish CDQ catch reported to NMFS Enforcement under the IFQ regulations may be reported in pounds or kilograms as required for the IFQ landings report. Reporting requirements for halibut CDQ

after 1998 will be addressed in a future rulemaking. See response to Comment 2.

Any CDQ catch reported on the CDQ delivery report or CDQ catch report at § 679.5(n) must be reported in metric tons to the nearest 0.001 mt, as is required for weekly production reports. Allowing CDQ representatives to chose among options for the units of measurement that may be used would increase reporting and data entry errors and complicate the CDQ information system.

Comment 37: NMFS should provide an alternative to supplying vessel name on CDQ reports because many skiffs do not have names.

Response: The requirement to submit the vessel name on the CDQ reports is changed in the final rule to read ''vessel name, writing 'unnamed' if the vessel has no name.''

Comments on the CDQ Observer, Observer Duties, and Observer Coverage Requirements

Comment 38: NMFS should not create a special category of observer for the MS CDQ fisheries. NMFS has not demonstrated that successful data collection on MS CDQ vessels will require specialized observers and additional observer training. Specifically, it is unclear that the needs of the MS CDQ Program will be different from the needs of the current pollock CDQ fishery, for which specialized training is not required. NMFS has rated the observers in the pollock CDQ fisheries as acceptable or better, demonstrating that these observers have been capable of meeting the demands of the pollock CDQ fisheries. The MS CDQ fisheries do not require any better or more experienced observers than those required by the open-access fisheries.

The responsibilities of MS CDQ observing are not significantly different from those for the other fisheries. On vessels with two CDQ observers, each observer would have less work to do. In addition, implementation of electronic reporting of observer data and scales to weigh catch on some processor vessels will reduce observer workload. Rather than requiring that vessels carry a specially trained, designated CDQ observer, NMFS should revise current observer training and briefing to prepare all observers for the requirements of the multispecies CDQ fisheries.

Response: NMFS disagrees. The MS CDQ Program does require specialized observers and additional observer training because the demands of the MS CDQ Program will be very different from the current pollock CDQ fishery. For many MS CDQ vessels, estimates based on observer data will be used as the primary source of information about the catch of all species, including prohibited species. In order to fulfill the responsibility of determining CDQ and PSQ catch, the MS CDQ observer must have both prior experience as an observer and training specific to the CDQ program. Additionally, the equipment requirements and recordkeeping and reporting requirements, with which the MS CDQ observer must be familiar, will be different in the MS CDQ fisheries from the existing requirements for the CDQ and IFQ fisheries and for the moratorium groundfish fisheries.

Comment 39: NMFS has inadequate infrastructure to provide the support CDQ observers will need. Observers in the CDQ fisheries will have an increased compliance monitoring role, which will lead to increased pressure from vessel operators and processors. Observers need to know that they will be supported by NMFS if they are being pressured in any way. The NMFS Observer Program and Enforcement Office will need additional staff to address problems that will arise with the multi-species CDQ program. How will NMFS address these additional needs?

Response: NMFS has received approval for additional staff and funding for the North Pacific Groundfish Observer Program to implement the MS CDQ Program and to support observers in the demanding role of a CDQ observer. In addition, equipment requirements such as scales to weigh total catch and observer sampling stations will provide additional tools to assist CDQ observers in estimating CDQ and PSQ catch.

Comment 40: Observers could suffer financially under the proposal to create a special category of observer for the CDQ fisheries. Contractors may not deploy persons qualified as CDQ observers on non-CDQ trips in order to have them available if a CDQ observer is needed. As a result, lead CDQ observers may be able to work only 2 to 3 weeks out of each season.

Response: NMFS disagrees. Certification as a CDQ observer will increase the types of observer employment that an individual is qualified for and should, therefore, improve his or her financial situation.

Comment 41: The proposal to create a special category of observers for the CDQ fisheries will increase costs to observer contractors and to the fishing industry. Observer contractors will have less flexibility when deploying observers because fewer observers will be qualified as CDQ and lead CDQ observers. The special training for CDQ observers will increase training costs, which will be passed on to the fishing industry. Observer travel costs will increase. Vessels face possible down time if the CDQ observers are not immediately available.

Response: NMFS agrees that requirements for CDQ observers may increase costs to participants in the CDQ fisheries and may reduce the flexibility of observer contractors. However, it is anticipated that sufficient numbers of CDQ observers will be available and vessels should not experience a delay due to a lack of CDQ observers (see responses to Comments 44 and 45.) The CDQ observer is necessary to implement the MS CDQ Program.

Comment 42: The proposal to create a special category of observers for the CDQ fisheries will negatively impact the overall quality of data collected for other groundfish fisheries, because experienced observers will be concentrated in CDQ fisheries.

Response: NMFS disagrees that requirements for the CDQ observers will reduce the quality of observers or observer data collected in the other groundfish fisheries. Many factors contribute to the overall quality of observer data, including certification requirements, training, compensation, working conditions, and NMFS support. NMFS is pursuing improvements to some of these factors through separate development of policy and rulemaking. The requirement for CDQ observers alone is not expected to have a significant negative effect on the number or quality of observers available for non-CDQ fisheries. In addition, CDQ observers will not be required to work in CDQ fisheries all the time and will continue to be available for the non-CDQ fisheries.

Comment 43: NMFS requires at least one lead CDQ observer on all vessels. What is the difference in responsibilities between the CDQ observer and the lead CDQ observer on a vessel with two observers?

Response: The sampling duties will be similar between the lead CDQ observer and other CDQ observers. Each will be expected to work a 12-hour shift. However, the lead observer will be the liaison person between the vessel and NMFS and will be responsible for determining whether any impediments to sampling exist and for resolving problems with sampling or data collection. The lead CDQ observer will be responsible for ensuring complete and correct data and will carry this responsibility through the debriefing process.

Comment 44: If qualified CDQ observers are not available, NMFS should waive the requirement for two CDQ observers or should reduce the requirements for CDQ observers.

Response: NMFS disagrees. The requirements for a CDQ observer are based on the anticipated needs of the CDQ program. NMFS believes that a sufficient number of observers meet the requirements for certification as CDQ observers (see response to Comment 45). Therefore, waivers or changes to the requirements for CDQ observers should not be necessary.

Comment 45: NMFS received the following comments about the proposed experience requirements for CDQ observers and lead CDQ observers:

1. NMFS proposed that one of the requirements for a CDQ observer be that he or she must have completed at least 60 days of observer data collection on a vessel using the same gear type as the CDQ vessel on which he or she will be deployed. NMFS should require instead that the CDQ observer have experience in the type of sampling and the type of fishery he or she will be observing in the CDQ fisheries.

2. NMFS proposed that the lead CDQ observer be required to complete at least 20 days of observer data collection on a vessel participating in a CDQ fishery in addition to the other requirements for a CDQ observer. The experience requirement for a lead CDQ observer should be a minimum of one full contract, rather than 20 days.

3. If all pot catcher vessels are required to have one CDQ observer who must be a lead CDQ observer, how do non-lead CDQ observers ever get the opportunity to qualify as lead observers for pot catcher vessels?

4. Do enough people exist with the qualifications required for CDQ observer to supply the number of CDQ and lead CDQ observers that will be necessary?

Response: After examining the work history for current observers, NMFS decided to reduce the experience requirements necessary for CDQ observers in order to increase the number of current observers who would be eligible to apply for certification as a CDQ observer. Section 679.50(h)(1)(i)(D) and (E) were changed as follows:

1. The CDQ observer is required to have 60 days of observer data collection experience, in general, rather than 60 days of experience in the same gear type as the CDQ vessel on which he or she will be deployed; and

2. The requirement for sampling experience on a vessel with the same gear type as the CDQ vessel on which the observer will be deployed now applies only to the lead CDQ observer.

3. The lead CDQ observer is no longer required to have 20 days of observer data collection on a vessel participating in a CDQ fishery.

The following table summarizes the experience requirements for CDQ observers (this does not include rating, training, or other general performance requirements):

The following table summarizes the experience requirements for CDQ observers (this does not include rating, training, or other general performance requirements):

CDQ observer classification	Experience requirements
All CDQ observers	60 days observer data collection.
Additional requirements for ''Lead'' CDQ Observers:	
Lead on catcher/processor (c/p) using trawl gear or a mothership.	2 cruises and sampled at least 100 hauls on a c/p using trawl gear or a mothership.
Lead on catcher vessel using trawl gear	2 cruises and sampled at least 50 hauls on a catcher vessel using trawl gear.
Lead on vessel using nontrawl gear	2 cruises of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.
Lead in shoreside plant	Observed at least 30 days in a shoreside processing plant.

In response to part 3 of this comment, under the proposed rule, a catcher vessel using pot gear would have been required to have a lead CDQ observer. In order to qualify as a lead CDQ observer for this vessel under the proposed rule, a person would have been required to have the following observer experience: (1) At least 60 days of observer data collection on a vessel using pot gear and (2) at least 20 days of experience on a vessel in a CDQ fishery. The commenter is expressing concern about how a non-lead CDQ observer (a person who had met the 60 days of pot gear experience) would be able to obtain the experience necessary to become a lead CDQ observer (a person with 20 days experience in the CDQ fisheries).

Under the proposed rule the requirement for 20 days experience in a CDQ fishery could have been obtained on a vessel using any gear type, as long as it was CDQ fishing. Under the final rule, these experience requirements are more flexible. The pot catcher vessel still is required to have a lead CDQ observer, but the experience requirement has changed to be as follows: (1) At least 60 days of observer data collection (no specific gear requirement for this experience), and (2) two cruises of at least 10 days each on a vessel using nontrawl gear in which the observer sampled at least 30 sets per cruise. Non-lead CDQ observers must get their 60 days of observer data collection experience in the non-CDQ groundfish fisheries. Lead CDQ observers may obtain their experience with specific gear types in either the CDQ or non-CDQ fisheries. Observer experience on vessels using longline, pot, or jig gear counts toward the nontrawl gear experience requirement.

Comment 46: NMFS proposed that one of the requirements for a CDQ observer be that he or she have received ''the rating of 1 for ''exceptional'' or 2 for ''meets expectations'' by NMFS for his or her most recent deployment.'' The NMFS rating system is 2 for ''exceptional'' and 1 for ''meets expectations.''

Response: The proposed rule was incorrect, and § 679.50(h)(1)(i)(D)(*2*) has been corrected to state that the CDQ observer must have received the rating of 1 for ''meets expectations'' or 2 for ''exceptional'' by NMFS for the most recent deployment. This requirement provides that only observers in good standing are eligible for certification as CDQ observers, which are the majority of observers deployed over the last 3 years. Those observers who would be ineligible as CDQ observers are those either under suspension pending review for decertification or in probationary status.

Comment 47: The NMFS rating system for observers does not appropriately indicate whether a person will be a competent CDQ observer. Unless the rating and evaluation system is drastically revised, it should not be used as an employment indicator for the CDQ program.

Response: NMFS believes that using the observer evaluation system is appropriate because it is only one component of determining whether an

observer will be a competent CDQ observer. The rating will be used to determine whether an observer meets the minimum qualifications for a CDQ observer. However, evaluation of competency will occur primarily during training and through continued performance evaluations.

Comment 48: In § 679.50(c)(4) of the proposed rule, NMFS proposed that no CDQ observer could be required to be on duty for more than 12 hours in a 24-hour period, to sample for more than 9 hours in a 24-hour period, or to sample more than three hauls in a 24-hour period on a vessel using trawl gear or a processor taking deliveries from vessels using trawl gear.

NMFS received several comments opposed to the proposed requirement that all hauls be sampled by an observer for species composition and that each observer be required to sample no more than three hauls each 24-hour period. This proposed requirement would limit trawl catcher/processors to six hauls per day. Most comments opposed this proposal because operators of catcher/processors want to make small hauls or ''test'' hauls to check the species composition of fish available for harvest in a particular area. The commenters stated that this practice allows them to minimize the bycatch and discard of undesired or prohibited species. Therefore, the limit of six hauls per day will likely increase bycatch and discards and increase the mortality rate of discarded catch. In addition, NMFS received comments that the fish quality declines when fish are harvested in large hauls or hauls towed for a long time. Catcher/processors that head and gut their product currently aim for hauls that average 10 mt and make between 8 and 10 hauls per day. In order for these vessels to continue both to take small test hauls and to maintain production levels while complying with a six hauls per day limit, vessels would be required to take some hauls as large as 30 mt to 50 mt.

In addition to the general recommendation that NMFS remove the limitation on the number of hauls that could be sampled, two other suggestions were made. First, NMFS should work with each vessel individually to develop a catch accounting plan through the CDQ permit process. Second, NMFS should establish a threshold for the number or percentage of hauls that must be observed.

Response: NMFS agrees that the limitation on the number of hauls that can be sampled by an observer is not sufficiently flexible for the variety of fishing situations that may be experienced on all trawl catcher/processors. Therefore, in the final rule, the limitation that an observer may sample only three hauls per shift has been removed. However, the requirement that all hauls or sets on catcher/processors must be sampled by an observer remains, as do the limitations on the number of hours that the CDQ observer is required to work each day.

A CDQ group will be required in its CDPs to demonstrate that vessels fishing under the CDPs have sufficient observer coverage to sample each haul or set. The final rule requires additional information to be submitted with the fishing plan in the CDP to provide NMFS with information to evaluate whether the requirement to sample each haul or set on each eligible vessel can be met with the minimum number of CDQ observers. The additional information that must be submitted includes (1) the number of CDQ observers that will be aboard the vessel; (2) the average and maximum number of hauls, sets, or pots that will be retrieved each day; (3) the average and maximum estimated total catch weight for each haul for vessels using trawl gear; (4) the time necessary to process the average and maximum haul size for vessels using trawl gear; and (5) the average number of hooks in each set and estimated time it will take to retrieve each set for vessels using hook-and-line gear.

Comment 49: NMFS' proposal to limit observers to being on duty for 12 hours per day and sampling no more than 9 hours per day does not give the observer credit for the amount of work they have already demonstrated they can do.

Response: NMFS recognizes that many observers work more than the limitations proposed for the MS CDQ Program. However, the need to sample each haul or set on catcher/processors requires a limit on the ability of the vessel to make sampling demands on observers.

Comment 50: Has NMFS determined the average number of hauls in a 24-hour period expected in each CDQ fishery? Does NMFS have any assessment of how this average may vary with vessel size, if it varies at all?

Response: NMFS has not performed this type of analysis. Our recommendations for the number of hauls that could be sampled by an observer in a 12-hour shift were based on NMFS staff estimates of the average observer workload requirements.

Comment 51: Will the number of unobserved hauls increase if NMFS limits the number of observed hauls to six per day?

Response: The final rule does not include the limit on the number of hauls that may be observed (see response to Comment 48). However, § 679.32(d) does require that all hauls and sets on observed vessels be sampled for species composition.

Comment 52: NMFS should require that one haul or set per observer's shift should be a partial-haul sample for prohibited species.

Response: NMFS will request that CDQ observers take as large a sample as possible from each haul while also ensuring that he or she samples each haul and set during his or her shift. Equipment requirements such as the scale to weigh total catch and the observer sampling station should allow the observers to take larger samples. However, NMFS will not place any additional specific requirements about the size or method of sampling in regulation.

Comment 53: NMFS should allow sorting by the crew with monitoring by the observer on catcher/processors to increase sample sizes and better provide for enumeration of all prohibited species, rather than depending on extrapolation from a limited number of relatively small basket samples.

Response: Current regulations at § 679.50(f)(1)(viii) require that the vessel crew assist the observer in sampling when requested to do so. NMFS also will review any proposals in the CDP that would provide for assistance from the crew to produce larger sample sizes. NMFS may approve CDP proposals for the vessel crew to perform sampling, sorting, and species identification with appropriate observer monitoring of the process to provide independent verification of catch. Also see the response to Comment 52.

Comment 54: In § 679.32(d)(4)(iv) of the proposed rule, NMFS proposed that ''each CDQ set or pot must be sampled by a CDQ observer for species composition and average weight.'' It is not possible to sample each and every pot.

Response: NMFS agrees. In the final rule, the requirement to sample each pot is removed. The observer will be requested to sample as many pots in the set as possible to estimate species composition.

Comment 55: NMFS should allow the use of grid sorting to reduce the mortality of halibut bycatch in the CDQ fisheries provided that International Pacific Halibut Commission and observer program requirements are met.

Response: Grid sorting has been discussed by the Council as an alternative to reduce the mortality of halibut bycatch. If NMFS implements

regulations allowing grid sorting in the future, these regulations would likely apply to all groundfish fisheries, including the CDQ fisheries. Until then, pre-sorting of halibut bycatch by the crew is prohibited.

Comment 56: NMFS should establish a provision to review the effects of the CDQ observer requirements on the quantity and quality of observer data in the groundfish and halibut CDQ fisheries.

Response: NMFS will evaluate the results of all requirements for the CDQ program, including the requirement for CDQ observers. However, it may be difficult to perform the specific evaluation requested because of the many other factors that affect the quantity and quality of observer data and the priority of this type of evaluation relative to other responsibilities of NMFS staff.

Comment 57: In the event that an observer's error is found during debriefing results in a significant recalculation of harvest, NMFS should not penalize vessel operators or CDQ groups that have relied on the observer data in good faith.

Response: NMFS will make every effort to minimize observer errors and to identify and correct them as soon as possible. If the error results in calculations that reduce the estimate of CDQ catch, that amount of fish, i.e., the difference between the estimate of caught fish and the CDQ, will then be available for harvest by the CDQ group. If the error results in calculations that increase the estimate of CDQ catch that then results in a CDQ overage, NMFS will consider all of the reasons for the overage in determining whether to pursue enforcement action against the CDQ group.

Comment 58: The catch accounting and monitoring system proposed for the MS CDQ Program is also being considered for use in other fisheries and FMPs in the future. In the final rule, NMFS should discuss the anticipated trade-offs and problems this proposal may create.

Response: The catch accounting system implemented for the MS CDQ Program is not necessarily the system that would be used for other individual vessel monitoring programs. The role of the State of Alaska, as a co-manager of the CDQ fisheries, and the requirement that CDQ groups apply for CDQ allocations every 3 years are among the important features that distinguish the MS CDQ Program from other proposed individual vessel monitoring programs. The catch monitoring and enforcement systems for other fishery management programs will be developed based on the needs and characteristics of those programs and participants. NMFS anticipates that experience with the MS CDQ Program catch monitoring and enforcement will provide valuable information about whether the catch monitoring program implemented for the groundfish CDQ fisheries should be applied to other programs.

Comment 59: NMFS should clarify in § 679.32(f)(4) that catcher vessels equal to or greater than 60 ft (18.29 m) LOA that deliver unsorted codends to processor vessels are not required to carry an observer during their CDQ fisheries.

Response: NMFS revised paragraphs (c), (d), and (f) in § 679.32 to include catcher vessels delivering unsorted codends as unobserved vessels.

Comment 60: Processors taking deliveries of Pacific cod or rockfish delivered with halibut CDQ should be required to comply with NMFS' requirements for a Federal processor permit and NMFS' observer coverage. These processors should not be exempt from this requirement under the MS CDQ Program.

Response: Current regulations at § 679.4(f) require all shoreside processors that take deliveries of groundfish harvested in the EEZ of the GOA or BSAI or deliveries from vessels with Federal fisheries permits to obtain a Federal processor permit. Therefore, shoreside processors receiving groundfish harvested in halibut IFQ or CDQ fisheries by vessels that do not have Federal fisheries permits and have fished only in Alaska State waters would not be required to have a Federal processor permit. NMFS observer coverage requirements for the general groundfish fisheries apply only to shoreside processors with a Federal processor permit. No changes to these regulations are made in this final rule.

Comment 61: Shoreside processors processing only halibut should be exempt from observer coverage requirements as is the current practice. Many of the halibut processors are very small operations, and the imposition of additional costs will have a large impact on the ability of these facilities to operate. There have been no reported problems with the accounting of halibut CDQ. It is unlikely that there will be enough work to keep the observers busy.

Response: This final rule contains no requirements for observer coverage for shoreside processors or registered buyers taking deliveries of only halibut. As stated in the response to Comment 2, NMFS will consider management measures for the halibut CDQ fishery in 1999 and beyond in a separate rulemaking.

Comment 62: Shoreplants processing less groundfish than a specified minimum should be exempt from CDQ observer coverage requirements as is done for the moratorium groundfish fisheries.

Response: NMFS disagrees. All deliveries from vessels fishing for groundfish CDQ must be observed by a lead CDQ observer in the shoreplant regardless of the observer coverage on the vessel. As stated in the response to Comment 2, NMFS will consider management measures for the halibut CDQ fishery in 1999 and beyond in a separate rulemaking.

Comment 63: NMFS should require two observers in shoreside plants for observer coverage around the clock, and those observers should have the same responsibility as observers at sea, i.e., full sampling responsibilities, and not simply a monitoring function.

Response: NMFS disagrees. No change is made in the final rule. The CDQ observer in the shoreplant will be required to monitor the sorting and weighing of all CDQ and PSQ species to verify that accurate delivery weights are reported on the CDQ delivery report.

Comment 64: In § 679.50(c)(4)(i), NMFS proposed to require that a mothership or catcher/processor of any length must have at least two CDQ observers, at least one of whom must be certified as a lead CDQ observer. This is a one-size-fits-all rule that fails to take into account the differences between vessels and gear type. On certain size vessels, it will not be possible to have two observers, because there is insufficient room. One result of this regulation is to limit the size and type of catcher/processors CDQ groups can use. This may result in forcing CDQ groups to cease using longline catcher/processors for their Aleutian Islands sablefish CDQ, since most of those vessels cannot carry two observers. The additional cost is an unnecessary burden on longline catcher/processors. These vessels harvest fish one at a time, which is very different from the large tows associated with trawl catcher/processors.

The following specific recommendations were made:

1. NMFS should require that longline catcher/processors less than 125 ft (38.10 m) LOA carry only one CDQ observer and allow the Regional Administrator (RA) to require a second observer at his or her discretion.

2. NMFS should require that longline catcher/processors of any size carry only one CDQ observer and allow the RA to require a second observer at his or her discretion.

Response: NMFS agrees that, under some circumstances, two observers may not be necessary on catcher/processors using nontrawl gear. Therefore, NMFS made the following changes in the final rule.

1. Section 679.50(c)(4) was changed to require two CDQ observers on catcher/processors of any length using hook-and-line gear, unless NMFS approves a CDP authorizing the vessel to carry only one CDQ observer, who must be certified as a lead CDQ observer. A CDP authorizing the vessel to carry only one CDQ observer will be approved by NMFS if the CDQ group supplies logbook or observer data for that vessel (from CDQ or non-CDQ fisheries for the same species, gear, and areas) that demonstrate that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day. NMFS will not approve a CDP that would require observers to divide his or her 12-hour shifts into shifts of less than 6 hours, because this would not allow the observer sufficient time to sleep.

2. Section 679.50(c)(4) was changed to require catcher/processors of any length using pot gear to have one lead CDQ observer, rather than two CDQ observers.

Comment 65: Longline catcher vessels less than 125 ft (38.10 m) LOA should have the same observer coverage requirements as the fixed gear halibut and sablefish IFQ fisheries. A discrepancy exists between approved IFQ regulations and proposed CDQ regulations: The same vessel could fish IFQ without observers yet be required to carry two observers for CDQ. In both instances, the vessel would be fishing against a defined quota, which requires an exact catch measurement for enforcement purposes. If there is going to be a difference, it should be justified sufficiently to warrant the imposition of a more burdensome regulation on one component of the same fishery.

Response: The catch monitoring requirements for the fixed gear halibut and sablefish IFQ fisheries and the MS CDQ fisheries are different. The IFQ fisheries require accounting of the catch of retained halibut and sablefish only. When these species are retained, NMFS Enforcement can check deliveries or product transfers to verify the accuracy of IFQ landings reports. The multispecies CDQ fisheries will require accounting for all catch, including prohibited species and other groundfish discarded at sea. The reliance on observer data and the source of data about CDQ and PSQ catch on these vessels warrant the additional observer coverage.

Comment 66: If longline catcher vessels between 60 ft (18.29 m) and 125 ft (38.10 m) LOA participating in the fixed gear halibut and sablefish CDQ fisheries are required to carry one CDQ observer, this requirement should be delayed until 1999.

Response: NMFS proposed that these observer coverage requirements would not be effective until January 1, 1999. These requirements are not changed in the final rule.

Comments on Equipment Requirements

Comment 67: The Magnuson-Stevens Act exempts longline catcher/processors from being required to weigh their catch on a scale.

Response: NMFS disagrees that section 312(h) of the Magnuson-Stevens Act (16 U.S.C. 1862(h)) exempts any vessel from requirements to weigh catch if these requirements are recommended by the Council and approved by the Secretary of Commerce. This section does, however, state that the Council should recommend measures to assist processors and processing vessels to acquire scales, unless the Council determines that such weighing is not necessary. The Magnuson-Stevens Act provides the Council authority to recommend scales on any type of fishing or processing vessel.

Comment 68: NMFS received comments opposing the proposed requirement that catcher/processors using trawl gear and motherships weigh total catch in the CDQ fisheries on a scale approved by NMFS under § 679.28. General comments stated that scales to weigh catch at sea are not necessary to determine the weight of CDQ catch. One comment stated that product recovery rates should be sufficient to estimate the weight of species, such as flatfish, for which the overfishing limit is well above the TAC.

Response: NMFS has determined that scales to weigh total catch on catcher/processors using trawl gear and motherships are necessary to manage the multispecies groundfish CDQ fisheries to obtain more accurate and verifiable catch weight estimates. The Council recommended the use of scales in the BSAI pollock fisheries in September 1994, and the Magnuson-Stevens Act authorizes the Council to recommend the use of scales. Although volumetric-based methods currently are used by observers and could be used in the CDQ fisheries, an accurate scale weight is preferred by NMFS because it shifts the responsibility for estimating total catch weight from the observer to the vessel operator. Volumetric estimates place the responsibility primarily on the observer. On many vessels, the equipment or operational situation does not provide the observer with the conditions necessary to obtain a good estimate of the volume or the density of fish. If the vessel operator disagrees with the process or outcome of the observer's volumetric estimate, pressure could be placed on the observer. However, if a scale is used to weigh catch, the observer's role is to monitor the use of the scale, and the vessel operator is responsible for maintaining and using the scale properly, testing the scale, and reporting the scale weights.

Because attainment of CDQs or PSQs will require the vessels fishing for a CDQ group to stop fishing sometimes before quotas for all species are reached, the pressure on observers in the MS CDQ fisheries is likely to be even greater than that on observers in other fisheries. NMFS expects that vessel operators will pay much closer attention to the observer data than they do in the moratorium groundfish fisheries, because their individual fishing activity will be decided based upon these data (unless some other method is approved by NMFS in the CDP). A scale to weigh total catch will increase the amount of information used to manage the CDQ fisheries that comes from the vessel operator, rather than from the observer.

Product recovery rates are used only to estimate the weight of retained catch. They are not appropriate as a method for estimating the total catch of CDQ species because they do not account for the weight of catch that is discarded prior to processing.

Comment 69: Some vessel owners may not be able to install scales, either due to space constraints on the vessel or due to the cost of the scale. A scale may not be capable of weighing accurately on small catcher/processors, because the vessels pitch and roll so much in bad weather. These scale requirements may prevent fishing companies that already have contracts with CDQ groups from being able to participate in the CDQ fisheries.

Response: NMFS has determined that a scale is necessary on all catcher/processors using trawl gear and on motherships for the reasons stated in the response to Comment 68. Processor vessels that cannot meet the installation, use, and daily testing requirements for a scale to weigh total catch will not be permitted to participate in the CDQ fisheries, regardless of any contracts with a CDQ group. Participation in the CDQ fisheries is voluntary and regulations governing the CDQ fisheries do not preclude these vessels from continuing to fish in the moratorium groundfish fisheries.

Comment 70: NMFS has underestimated the costs of installing a scale. The purchase of the scale and redesign of one vessel is estimated to cost approximately $500,000.

Response: In the proposed rule, NMFS estimated that the purchase of a scale may cost between $30,000 (hopper scales) and $50,000 (belt-conveyor scales). Installation costs will vary depending on the type of scale selected, the modifications necessary to accommodate the scale, and changes in the sorting and discarding operations. NMFS estimated that installation of an at-sea scale could cost from $5,000 to $250,000 per vessel and that the installation of the scale could also reduce the efficiency of the fish processing factory, particularly if processing equipment had to be relocated. The installation estimates were based on discussions with vessel owners and businesses that design fish processing factories. However, specific estimates of the purchase and installation of scales on particular processor vessels were not undertaken. NMFS acknowledges the uncertainty associated with the estimates and cannot either confirm or refute the cost estimate made in this comment. Participation in CDQ fisheries is voluntary and NMFS anticipates that only those vessels for which participation is cost-effective will chose to fish for CDQ.

Comment 71: The following comment was received about the impact on small entities of the requirement that catcher/processors using trawl gear and motherships weigh CDQ catch on a scale approved by NMFS (text in italics added by NMFS for clarification).

> We understand that NMFS has never done other than a finding of no significant impact (FONSI) when looking at effects of regulations under the standards of the Regulatory Flexibility Act. However, we feel certain that the agency must find a significant impact from this certification regulation and the ensuing regulations which specify who must comply with this one (*scale requirement*). The additional cost of the compliance of my vessels with these regulations will be considerably more than the ten-percent used by NMFS as a marker. And a quick review of the vessels doing CDQ indicate that more than 20% will be significantly impacted.

Response: The Regulatory Flexibility Act (RFA) requires NMFS to consider the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits. NMFS standards for determining whether an action is likely to have a significant economic impact on a substantial number of small entities are outlined in the Classification section of this rule.

Four of the 58 catcher/processors using trawl gear in the BSAI groundfish fisheries are considered small entities because they are fish-harvesting businesses that are independently owned and operated, not dominant in their field of operation, and probably have annual receipts not in excess of $3,000,000.

NMFS estimates that up to 37 of the 58 catcher/processors using trawl gear in the BSAI groundfish fisheries will participate in the MS groundfish CDQ fisheries, including all 4 of the catcher/processors determined to be small entities. Furthermore, NMFS has determined that these small entities may be significantly impacted by the observer coverage and equipment requirements, because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities. In addition to these 4 catcher/processors using trawl gear, NMFS determined that an additional 29 of the small entities expected to participate in the MS groundfish CDQ fisheries also may be significantly impacted by observer and equipment requirements for the MS CDQ fisheries. Additional information about these other small entities is included in the Classification section of this final rule and in a Supplemental Regulatory Impact Review available from NMFS (see **ADDRESSES**).

However, although NMFS has determined that the MS CDQ monitoring regulations may have a significant economic impact on approximately 33 of the expected participants in the MS groundfish CDQ fisheries, these regulations will not impact a ''substantial number'' of small entities in the universe of 403 small entities. NMFS generally considers a substantial number to be 20 percent or more of the universe of small entities. The 33 vessels that could experience significant economic impacts as a result of this rule constitute only 8.2 percent of the universe of affected small entities (403).

In addition, participation in the CDQ fisheries is voluntary. CDQ groups, vessels, and processors are expected to participate only if the CDQ fisheries would generate some net economic gain for their business. They would not be expected to participate in the CDQ fisheries if that participation would result in significant negative economic impact.

Comment 72: NMFS should not require scales until more research is done on whether scales will weigh accurately on all vessel types and sizes and in the range of environmental conditions that occur at sea. Scales have not been proven to weigh accurately on all vessels and under all conditions that will be experienced in the BSAI.

Response: NMFS cannot guarantee that scales will weigh accurately on all vessels and under all conditions and is not setting this as a condition for implementing the scale requirement in the CDQ fisheries. Rather, NMFS has determined that CDQ catch made by catcher/processors using trawl gear or delivered to motherships must be weighed on a scale that meets the requirements of § 679.28(c). No exemptions or exceptions will be made. If a scale on a vessel cannot meet these standards for any reason, even reasons relating to the type or size of vessel or the weather or sea conditions, the vessel should not participate in the CDQ fisheries; if it does, it will be in violation of NMFS regulations.

Comment 73: NMFS should allow the use of other methods, such as volumetrics, if a scale fails an at-sea scale test or the scale malfunctions. It is unreasonable to expect the vessel to return to port in the middle of a trip.

Response: NMFS will not allow the use of volumetric methods as a back-up in case the scale fails an at-sea test or malfunctions. Such an allowance would undermine the requirement to weigh all catch on a scale. Catcher/processors using trawl gear and motherships are required to weigh all catch in the CDQ fisheries on a scale approved under, and meeting all of the operational requirements of, § 679.28(c).

Comment 74: NMFS should require that total catch weight estimates on processor vessels meet a standard for accuracy, rather than prescribe a method such as weighing on a scale. Regulations should specify a result and not a method.

Response: NMFS interprets this suggestion to mean that NMFS should specify a level of accuracy that must be achieved in catch weight estimation and allow vessel operators to demonstrate

that this level of accuracy has been met. Although no specific proposals were set forth, NMFS does not believe that this type of approach could be implemented. If NMFS specified, for example, that total catch weight must be determined to within 3 percent of its known weight, how would a vessel owner demonstrate that the volumetric or production-based method being used achieved this level of accuracy?

Volumetric estimates are a product of the estimate of the volume of fish in a net or holding bin in cubic meters and the density of fish in metric tons per cubic meter. The observer multiplies the cubic meters of fish in the net or bin by the density factor to convert cubic meters of fish into metric tons of fish. The estimates of the cubic meters of fish and the estimate of the density factor have inherent errors. NMFS has recently recommended a standard density factor for catches that are 95 percent or more pollock after conducting lengthy research. However, no similar research has been done for the mixed-species fisheries where determination of a density factor is complicated by the changing species composition of catch from haul to haul. The fishing industry likely could not perform the research necessary to specify conditions for volumetric estimates of catch weight in the mixed-species fisheries that would demonstrate that the catch weight on each vessel had been estimated within a specific range of error or accuracy standard.

The only practical option is to set such performance standards for particular types of equipment or approaches as are established in § 679.28 for scales and volumetrics, then specify which procedure must be followed and the associated equipment and operational requirements. In the case of the multispecies CDQ fisheries, NMFS has specified that scales are required and volumetrics will not be acceptable.

Comment 75: NMFS must have scale inspectors readily available in Seattle and Dutch Harbor to conduct scale inspections. The scale requirement will effectively require the State of Alaska to station inspectors in these ports.

Response: Refer to the response to comments in the final rule for the at-sea scales program (63 FR 5836, February 4, 1998) for more information on the scale inspection program. Although no State of Alaska inspector will be stationed in Seattle or Dutch Harbor, NMFS is requiring that scale inspections be conducted within 10 working days of the date on which the State of Alaska receives a written request from the vessel owner.

Comment 76: The proposed requirement to weigh CDQ catch on a scale does not address the uncertainty associated with species composition sampling to determine the estimated weight of each CDQ species in the catch.

Response: NMFS agrees that the uncertainty associated with species composition sampling is not changed by the requirement to weigh total catch. Observers will continue to sample the catch to determine the proportion of each species in each haul, set, or pot. However, some aspects of the multispecies CDQ regulations should improve these samples. For example, additional observers and the requirement that each haul or set be sampled will increase the amount of the catch that is sampled for species composition. The requirement that the scale used to weigh total catch be available for the observer to weigh large partial haul samples should provide for increased sample sizes, and the requirement for a motion-compensated platform scale should increase the accuracy of the sample weights.

Methods proposed by NMFS that would be based on observer sampling to estimate species composition of the catch would use sample sizes and procedures that NMFS believes an observer could reasonably accomplish in the time available to him or her under the fishing and processing conditions on a vessel. Observers would obtain the largest sample sizes they can, given time, equipment, available space, and catch composition. NMFS is not proposing to specify minimum sample sizes necessary to obtain catch weight estimates with specific statistical qualities. The staff resources and data necessary to develop sampling plans appropriate for specific target fisheries or specific vessels are not available at this time. In addition, NMFS expects that the minimum sample sizes required to estimate the weight of infrequently occurring species on a haul-by-haul basis with a high level of confidence would be too large to accommodate in the space available on many vessels and would require more than two observers to sort and weigh. If NMFS develops sampling plans or minimum sample sizes for the groundfish fisheries as a whole in the future, this information could be added to the CDQ fishery requirements at that time.

Comment 77: The scale may have to be installed in a location that prevents the observer from seeing the fish at all points between the live tank and the sampling station.

Response: NMFS is not requiring that the scale be located so that the observer can see fish at all points between the live tank and the sampling station.

Comment 78: NMFS should adopt a pre-approval process to review and approve or conditionally approve vessel modification plans for scales and observer sampling stations.

Response: NMFS will review plans for vessel modifications and discuss installation and technical requirements if requested to do so by a vessel owner. However, NMFS cannot approve the vessel owner's plans. Determination of whether equipment meets NMFS' requirements can only be determined once the equipment is installed and in use.

Comment 79: NMFS should clarify that reinspection of bins is not required for the 1998 pollock season for currently participating vessels.

Response: Bins that are currently certified based on regulations at § 679.32(e) with certification documents dated before July 6, 1998 do not have to meet two new requirements in this final rule. These requirements are (1) the requirement at § 679.28(e)(2)(i) that the numerals at the 10-cm increment marks be at least 4 cm high, and (2) the requirement at § 679.28(e)(3) for the information that must be submitted to NMFS in the bin certification documents. As stated in the proposed rule, because the bin certification requirements would be effective only for 1998 in the CDQ fisheries, vessel owners should not be required to modify numerals on previously certified bins. However, any bins certified for the first time or recertified after the effective date of this final rule must comply with this requirement.

Comment 80: The proposed requirement for an observer sampling station is a positive development for observers. Observers will be able to accomplish their duties much more efficiently, resulting in higher quality data and possibly larger sample sizes.

Response: NMFS agrees.

Comment 81: The proposed requirement that the observer sampling station on longline or pot catcher vessels or catcher/processors be located within 3 m of the location where fish are brought on board the vessel is unsafe. It will place observers dangerously close to the location where fish are landed. Three recommendations were made. The first recommendation is to specify the components and dimensions of the observer sampling station and allow the vessel to place it in a safe location as close as possible to where the fish are brought on board the vessel or to where the observer has first access to fish after they have been removed from the hook or pot. If there

must be an absolute distance requirement, it should be as close as possible but not more than 40 ft (12.19 m). The second recommendation is for NMFS to work with individual vessels and decide on the best placement of sampling stations on a vessel-by-vessel basis. The third recommendation is to allow the observer to determine the location of the observer sampling station, as currently is the practice.

Response: NMFS revised the requirement in § 679.28(d)(2)(ii) for the observer sampling station on vessels using nontrawl gear as follows: ''The observer sampling station must be located within 5 m of the location where fish are brought on board the vessel, unless any location within this distance is unsafe for the observer. The vessel owner must submit a written proposal to NMFS for an alternative location, including the reasons why a location within 5 m of where fish are brought onboard the vessel is unsafe.'' This written proposal must be included in the proposed CDP.

Comment 82: In § 679.28(d)(3) of the proposed rule, NMFS proposed that the observer sampling station be at least 1.8 m wide by 2.5 m long (approximately 6 ft x 8 ft), including the observer's sampling table. The proposed size is too large considering the limited space available on most trawl and longline vessels. Some otherwise highly desirable CDQ partners may be precluded from participation in the CDQ program as a result of this requirement.

Response: The specified amount of space is necessary for the observer sampling station. No change was made in the final rule in response to this comment.

Comment 83: The sampling station should also include a requirement for a checker bin or container where an observer can deposit and hold fish while sampling.

Response: Although it would be helpful for the vessel owner to provide such a container for observers, it is not an essential element of an observer sampling station. No change was made in response to this comment.

Comment 84: Deck sorting of catch on trawl catcher/processors is a technique used to reduce the mortality rate of some bycatch species, such as crab and halibut. The observer may participate in collecting and recording data regarding this bycatch as deck sorting is taking place. It would be dangerous for the observer sampling station to be located within 4 m of that location.

Response: The observer sampling station on a trawl catcher/processor is required to be within 4 m of where the observer samples unsorted catch, which generally occurs below deck as fish are being removed from the holding bins. Therefore, NMFS does not expect that any observer sampling station would be located on deck for catcher/processors using trawl gear. With respect to sorting prohibited species from the deck of trawl catcher/processors, current requirements at § 679.7(g) prohibit any person from interfering with or biasing the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch, including bycatch, before sampling. Therefore, if the observer is sampling catch below deck, the vessel crew is prohibited from sorting any catch from the deck.

Other Miscellaneous Comments

Comment 85: NMFS should allow vessels using trawl gear in the groundfish CDQ fisheries to start fishing on January 1, rather than requiring them to comply with the closure to fishing with trawl gear in the BSAI at § 679.23. The period between January 1 and 20 is an attractive time for many CDQ vessels to target pollock and rock sole to maximize the value of these fisheries. Maintaining this closure reduces the value of the CDQ fisheries.

Response: NMFS believes that this issue should be addressed before the Council with an opportunity for analysis and public comment. Therefore, the final rule will not be changed in response to this comment.

Comment 86: Retention and utilization requirements under the IR/IU program should not apply to the MS CDQ Program. These requirements are unnecessary and unreasonable, since the CDQ program, by its nature, ensures that the CDQ groups will rationally determine the optimal balance between socioeconomic needs and production cost, thus eliminating waste.

Response: NMFS disagrees. The CDQ fisheries will not be exempt from retention and utilization requirements that must be met by any vessel fishing for groundfish in the BSAI. The commenter is referred to the proposed and final rules implementing the IR/IU Program for a description of the purpose and need of the IR/IU Program (62 FR 34429, June 26, 1997, and 62 FR 63880, December 3, 1997).

Comment 87: The interim specifications process allows the harvest of only 25 percent of the CDQ and PSQ amounts until the specifications are finalized for the fishing year. This creates unnecessary problems that hamper the MS CDQ Program's effectiveness. NMFS should change the regulations to assign 50 percent of the proposed CDQs to the CDQ groups.

Response: The Council and NMFS are considering changes to the annual specifications process. Therefore, NMFS recommends that concerns about the impact of the specifications process on the CDQ fisheries be addressed through this ongoing Council process. No change to the final rule was made in response to this comment.

Changes From the Proposed Rule

In addition to the changes described in the Response to Comments section, NMFS has made the following changes from the proposed rule:

1. The definition of CDQ number was revised to specify that this number is to be used on all reports submitted by vessels and processors participating in the CDQ program in addition to being used by the CDQ representative.

2. The requirement for a CDQ permit was removed from the final rule because it was redundant; there are other requirements to demonstrate compliance with equipment requirements. Additionally, the fact that only certain vessels and processors were required to have a CDQ permit caused confusion. The objective of the CDQ permit was to provide a mechanism to verify that the scales and the observer sampling station required on vessels and sorting and weighing requirements for shoreside processors complied with requirements in § 679.28 before a vessel or processor was allowed to participate in the CDQ fisheries. The final rule replaces the CDQ permit with the requirement at § 679.28(d)(8) for an inspection of the observer sampling station by NMFS to verify that requirements for the observer sampling station are met. A prohibition against participating in the CDQ fisheries without a valid observer sampling station inspection report is added to § 679.7. The process for inspecting and approving at-sea scales already exists at § 679.28(b).

3. In the final rule, NMFS removed the sentence in § 679.32(a)(2) of the proposed rule, which stated, ''[t]he catch of * * * sablefish with fixed gear in the multispecies CDQ fisheries in 1998 will not accrue to the CDQs for these species.'' NMFS reviewed the Council's recommendations from its meeting in April 1996 and determined that the Council intended to exempt only groundfish and prohibited species bycatch in the fixed gear sablefish CDQ fisheries from accrual to the CDQs and PSQs for these species in 1998. This provision is made in § 679.32(g). However, the Council did not request that NMFS exempt sablefish catch in

other groundfish CDQ fisheries from accrual against the sablefish CDQ in 1998. Therefore, the final rule requires bycatch of sablefish in other CDQ fisheries in 1998 to accrue against a CDQ group's sablefish CDQ.

4. NMFS added prohibitions to § 679.7 against owners or operators of vessels or processors participating in the CDQ fisheries in violation of equipment requirements.

5. NMFS added a new paragraph (h) to § 679.22 to cross reference the MS CDQ Program's prohibited species catch closures that are listed in § 679.7(d).

6. NMFS revised § 679.28(d)(5) to be consistent with requirements for the observer sampling scale added to the final rule for the at-sea scale program (63 FR 5836, February 4, 1998). The observer sampling scale must be approved by NMFS under paragraph (b) of this section, must be tested daily as required under paragraph (b)(3) of this section, and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section.

7. NMFS revised § 679.30(a)(5)(iii) to add the provision that a substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative to NMFS's standard methods of determining CDQ and PSQ catch for that vessel under § 679.30(a)(5)(ii). In this case, a technical amendment would not provide sufficient time for NMFS' review of the alternative proposal.

8. The final rule makes three technical corrections to the proposed rule. First, the allocation of PSC to the MS CDQ program is moved from § 679.21(e)(3) to § 679.21(e)(1)(i) and (e)(2)(i) in order to solve cross referencing problems that were created when the instruction was placed in paragraph (e)(3). Second, cross references to paragraphs of §§ 679.2, 679.21, and 679.31 that are changed by this rule are updated. Third, the stricture that PSQ is not apportioned by gear or fishery is made explicit in § 679.21(e)(1)(i) and (e)(2)(ii).

9. The final rule amends 15 CFR part 902 to add the OMB control number for the at-sea scales program to the list of approved NOAA information collection requirements under the Paperwork Reduction Act.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. NMFS received one comment on that certification (see Comment 71 and the response to it). For the following reasons, this comment did not lead NMFS to change its certification and as a result, a regulatory flexibility analysis was not prepared.

The MS CDQ Program is comprised of three different CDQ fisheries: (1) The multispecies groundfish CDQ fisheries, which include the current pollock and fixed gear sablefish CDQ fisheries, as well as the additional groundfish and prohibited species added to the CDQ program in 1998; (2) the fixed gear halibut CDQ fisheries; and (3) the crab CDQ fisheries. Information about the impact of the allocation of the CDQ reserves from the TACs available to non-CDQ fisheries was discussed in the final rule that implemented the multispecies groundfish and crab CDQ reserves (63 FR 8356, February 19, 1998). The final rule being published today includes the administrative requirements for all of the CDQ fisheries and the reporting and catch monitoring requirements for the groundfish and halibut CDQ fisheries. Catch monitoring for the crab CDQ fisheries is the responsibility of the State of Alaska and NMFS does not promulgate regulations governing catch monitoring for the crab CDQ fisheries. In addition, this final rule makes no significant changes to the catch monitoring requirements for the halibut CDQ fisheries. Therefore, the primary economic impact of this final rule on participants in the CDQ fisheries is the impact of the equipment and observer coverage requirements for vessels and processors participating in the MS groundfish CDQ fisheries. Therefore, the remainder of this discussion focuses on participants in that fishery only (MS groundfish CDQ).

NMFS prepared a Supplemental Regulatory Impact Review to analyze the impact of the equipment and observer coverage requirements for vessels and processors participating in the MS groundfish CDQ fisheries. This analysis is available from NMFS (see **ADDRESSES**).

The universe of entities that could participate in the MS groundfish CDQ program is comprised of all 471 current participants in the BSAI groundfish fisheries, including the CDQ groups, vessels, and processors. The individual participants are divided into the following categories: CDQ groups, catcher vessels using trawl gear on vessels less than 60 ft (18.29 m) LOA, catcher vessels using fixed gear (longline and pot gear) on vessels less than 60 ft (18.29 m) LOA, catcher vessels using trawl gear on vessels 60′ and over LOA, catcher vessels using fixed gear on vessels 60′ and over LOA, catcher/processors of any length using trawl gear, catcher/processors of any length using fixed gear, motherships, floating processors (processor vessels operating within 3 miles of the coast of Alaska), and shoreside processing plants. Of these 471 entities, 403 (86 percent) are considered small entities and, therefore, make up the ''universe of small entities.''

Of the 471 affected entities, NMFS estimates that 92 will participate in the MS groundfish CDQ fisheries based on current participation in the pollock and fixed gear sablefish CDQ fisheries and on the CDQ groups' projections of the number of additional participants that will enter the CDQ fisheries once the MS CDQ Program is implemented. The 92 participants are comprised of 6 CDQ groups; 28 catcher vessels 60 ft (18.29 m) LOA and over using trawl gear; 5 catcher vessels 60 ft (18.29 m) LOA and over using longline gear; 37 catcher/processors using trawl gear; 10 catcher/processor using longline gear; 2 motherships; and 4 shoreside processing plants.

Of these 92 expected participants in the MS groundfish CDQ fisheries, 57 are considered small entities by NMFS. The small entities include 6 CDQ groups; 28 catcher vessels 60 ft (18.29 m) LOA and over using trawl gear; 5 catcher vessels 60 ft (18.29 m) LOA and over using longline gear; 4 of the 37 catcher/processors using trawl gear; 10 catcher/processor using longline gear; 4 shoreside processing plants.

NMFS further determined that 33 of the 57 small entities expected to participate in the MS groundfish CDQ fisheries may be significantly impacted by the observer coverage and equipment requirements for the following reasons.

Six CDQ groups: the costs of observer coverage and equipment requirements are directly paid by the vessels and processors participating in the CDQ fisheries. However, these costs may be passed on to the CDQ groups in the form of lower royalties. Therefore, the CDQ groups may indirectly bear the costs of these requirements. Because NMFS does not know whether these costs will be passed on or to what degree, NMFS determines that the CDQ groups may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues to the CDQ groups by more than 5 percent.

Four catcher vessels 60 ft (18.29 m) and over using trawl gear: 24 of the 28 catcher vessels that are expected to

participate in the MS groundfish CDQ fisheries will not be significantly impacted by the observer coverage requirements because they already are required to have this level of observer coverage under current regulations for the pollock CDQ fisheries. However, the 4 additional catcher vessels that NMFS expects may enter the MS groundfish CDQ fisheries in the future could be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

Five catcher vessels 60 ft (18.29 m) and over using longline gear: NMFS determines that these small entities may be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

Four of the 37 catcher/processors using trawl gear: NMFS determines that these small entities may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities.

Ten catcher/processor using longline gear: NMFS determines that these small entities may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities.

Four shoreside processing plants: NMFS determines that these small entities may be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

NMFS has determined that, while the MS CDQ monitoring regulations may have a significant impact on approximately 33 of the expected participants in the MS groundfish CDQ fisheries, these regulations will not impact a ''substantial number'' of small entities in the universe of 403 small entities. A substantial number is defined by NMFS as 20 percent or more of the universe of small entities. The participants that could experience significant economic impacts constitute 8.2 percent of the total universe of affected small entities (403).

In addition, participation in the CDQ fisheries is voluntary. It is anticipated that CDQ groups, vessels, and processors would weigh the cost of compliance with these regulations against the potential profits associated with participating in the CDQ program and would enter the CDQ fisheries only if they expected to realize a net economic benefit.

Finally, some of the catch monitoring costs will be deductible under the future CDQ fee collection program. The Magnuson-Stevens Act, section 305(i)(3) states that ''The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.''

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. A request will be submitted to the Office of Management and Budget (OMB) for approval of the requirements for the CDQ delivery report (§ 679.5(n)(1)), prior notice to the observer on catcher/processors and motherships that CDQ catch will be brought onboard the vessel (§ 679.32(c)(4)(i)), additional information in the CDQ catch report (§ 679.5(n)(2)) and additional information in the CDP (§ 679.30(a)(5)(i)(A)(*2*)). The public reporting burden for these proposed requirements is estimated to be 1 hour per response for the CDQ delivery report, 2 minutes per response for prior notice to the observers, ½ hour per response for the CDQ catch report and 20 hours per response for the additional information required in the CDP.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number. These estimates 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 the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

The other collections of information in this rule have been approved by OMB, OMB control number 0648–0269. The public reporting burden for this collection of information is estimated to average 500 hours per response for the CDPs, 40 hours per response for the annual report, 20 hours per response for the annual budget reports, 8 hours per response for the annual budget reconciliation reports, 8 hours per response for substantial amendments, 4 hours per response for technical amendments, 2 hours per response for CDQ catch reports, 2 hours per response for the request for an inspection of the observer sampling station (information required under the CDQ permit in the proposed rule), 2 minutes per response for prior notices to the observer that CDQ catch will be offloaded at the shoreside processing plant, and 10 minutes per response for printing and retaining scale printouts by shoreside processors. The public reporting burden for requirements applicable in 1998 is estimated to average only 8 hours per response to complete bin certification documents, 0.5 hour per response for changes to the list of CDQ halibut/sablefish cardholders, and 1 hour per response for changes to CDP lists of vessels for halibut/sablefish.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 27, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 679 are amended as follows:

15 CFR Chapter IX

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.*

§ 902.1 [Amended]

2. In § 902.1, paragraph (b), in the table, under 50 CFR, the following changes are made:

a. To the entry ''679.5'', the number ''–0269'' is added to the list of numbers in the right column.

b. The entry ''679.28'' is added in numerical order in the left column and the corresponding entry ''–0330'' is added in the right column.

c. To the entry ''679.32'', the number ''–0272'' is added to the list of numbers in the right column.

d. The entries for ''679.33'' and ''679.34'' are removed.

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

4. In § 679.1, paragraph (e) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(e) *Western Alaska CDQ Program*. The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

* * * * *

5. In § 679.2, the definition for ''Governor'' is removed; the definitions for ''Community Development Plan (CDP)'', ''Community Development Quota (CDQ)'', ''Person'', ''Prohibited species quota'', ''Qualified applicant'', and ''Resident fisherman'' are revised; and definitions for ''CDQ allocation'', ''CDQ group'', ''CDQ number'', ''CDQ project'', ''CDQ representative'', ''CDQ species'', ''Eligible community'', ''Fixed gear sablefish and halibut CDQ fishing'', ''Groundfish CDQ fishing'', ''Managing organization'', ''Pollock CDQ fishing'', ''PSQ allocation'', and ''PSQ species'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ *allocation* means a percentage of a CDQ reserve under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ group means a qualified applicant with an approved CDP.

CDQ number means a number assigned to a CDQ group by NMFS that must be used on all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

* * * * *

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31, in metric tons, that is allocated to the CDQ program.

* * * * *

Eligible community means a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

* * * * *

Fixed gear sablefish and halibut CDQ fishing (applicable through December 31, 1998) means fishing with fixed gear by an eligible vessel listed on an approved CDP that results in the catch of any halibut CDQ or the catch of any sablefish CDQ that accrues against the fixed gear sablefish CDQ reserve.

* * * * *

Groundfish CDQ fishing (applicable through December 31, 1998) means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ.

* * * * *

Managing organization means the organization responsible for managing all or part of a CDP.

* * * * *

Person means:

(1) For purposes of IFQ species and the CDQ program, any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) For purposes of High Seas Salmon Fishery permits issued under § 679.4(h), the term ''person'' excludes any nonhuman entity.

(3) (Applicable through December 31, 1998). For purposes of the moratorium, any individual who is a citizen of the United States or any U.S. corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state.

* * * * *

Pollock CDQ fishing (applicable through December 31, 1998) means fishing with pelagic trawl gear by an eligible vessel listed on an approved CDP that results in the catch of pollock that accrues against a CDQ group's allocation of pollock CDQ.

* * * * *

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e) (1) and (2) that is allocated to the groundfish CDQ program under § 679.21 (e)(1)(i) and (e)(2)(i).

* * * * *

PSQ allocation means a percentage of a PSQ reserve specified pursuant to § 679.31(g) that is assigned to a CDQ group when NMFS approves a proposed CDP.

PSQ species means any species that has been assigned to a PSQ reserve as specified at § 679.31(g) for purposes of the CDQ program.

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that:

(i) Represents an eligible community or group of eligible communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that:

(i) Represents an eligible community or group of communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

* * * * *

Resident fisherman means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address.

* * * * *

6. In § 679.5, paragraphs (h)(2)(i)(C) and (h)(2)(ii)(F) are revised, and a new paragraph (n) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(C) *Fishing for groundfish CDQ species.* The operator of a catcher/processor or mothership must submit by fax a check-in report to the Regional Administrator prior to fishing for any CDQ species. A separate report must be submitted for each CDQ number.

(ii) * * *

(F) *Fishing for groundfish CDQ species.* The operator of a catcher/processor or mothership must submit by fax a check-out report to the Regional Administrator within 24 hours after fishing for any CDQ species has ceased. A separate report must be submitted for each CDQ number.

* * * * *

(n) *Groundfish CDQ fisheries*—(1) *CDQ delivery report.* The manager of each shoreside processor and the manager or operator of each buying station taking deliveries of CDQ or PSQ species from catcher vessels must submit the following information on the CDQ delivery report to NMFS within 24 hours of each delivery of groundfish CDQ species:

(i) CDQ number.

(ii) Name of the vessel delivering CDQ, writing ''unnamed'' if the vessel has no name.

(iii) ADF&G number of the vessel delivering CDQ.

(iv) Federal fisheries permit number of the vessel delivering CDQ, if applicable.

(v) Name of the processor taking delivery of the CDQ.

(vi) Federal processor permit number of the processor taking delivery of the CDQ.

(vii) Gear used to catch CDQ.

(viii) The CDQ delivery number, which is a unique, sequential number assigned by the catcher vessel operator and recorded in the DCPL.

(ix) Reporting area where CDQ catch was made.

(x) For catcher vessels using trawl gear, whether the catch was from the CVOA or from the COBLZ.

(xi) Date the CDQ catch was delivered to the processor.

(xii) Species codes using codes in Table 2 to this part.

(xiii) Product codes using the product codes listed in Table 1 to this part for groundfish and at § 679.42(c)(2)(iii) for halibut, using product code 98 to designate at-sea discards reported by the operator of an unobserved vessel.

(xiv) Product weight to the nearest 0.001 mt for groundfish CDQ and halibut CDQ or PSQ, and the total number of salmon PSQ and crab PSQ delivered to the processor. The weight of halibut CDQ, halibut PSQ, halibut IFQ, and sablefish IFQ must be reported separately on the CDQ delivery report. In addition, PSQ delivered to the processor must be reported separately from PSQ discarded at sea by unobserved catcher vessels. For catcher vessels with a CDQ observer, do not report estimates of at-sea discards on the CDQ delivery report.

(xv) The printed name, signature, and date of signature for the vessel operator and the manager of the shoreside processing plant or operator or the buying station.

(2) *CDQ catch report.* The CDQ catch report is required for all catch made by vessels groundfish CDQ fishing as defined at § 679.2. The CDQ representative must submit the following information to NMFS within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, buying station, or mothership, or within 7 days of the date gear used to catch CDQ was retrieved for catcher/processors.

(i) *For all CDQ catch reports.* (A) CDQ number.

(B) Name of vessel used to catch CDQ, writing ''unnamed'' if the vessel has no name.

(C) Federal fisheries permit number of the vessel used to catch CDQ.

(D) ADF&G number of the vessel used to catch CDQ.

(E) Gear used to catch CDQ.

(F) Reporting area where CDQ catch was made.

(G) For vessels using trawl gear, whether the catch was from the CVOA or COBLZ.

(H) Species codes using codes in Table 2 to this part.

(I) The CDQ representative's printed name, signature, and date of signature.

(ii) *For catcher vessels retaining all groundfish CDQ and delivering it to a shoreside processing plant (Option 1 in the CDP).* (A) Name of the processor taking delivery of the CDQ.

(B) Federal processor permit number of the processor taking delivery of the CDQ.

(C) Date CDQ catch was delivered.

(D) The CDQ delivery number.

(E) Product codes using the product codes listed in Table 1 to this part for groundfish and at § 679.42(c)(2)(iii) for halibut, using product code 98 to designate at-sea discards reported by the operator of an unobserved vessel.

(F) Product weight to the nearest 0.001 mt for groundfish CDQ and halibut CDQ or PSQ, and the total number of salmon PSQ and crab PSQ. The weight of halibut and sablefish CDQ and IFQ, and the weight of halibut PSQ must be reported separately. PSQ reports must include all PSQ delivered to the processor and all PSQ reported as discarded at sea by the vessel operator for unobserved vessels and by the CDQ observer for vessels required to carry a CDQ observer. The CDQ catch report must identify whether sablefish CDQ accrues against the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve as defined at § 679.20(b)(1)(iii).

(iii) *For catcher/processors; catcher vessels delivering to motherships; and catcher vessels using nontrawl gear discarding groundfish CDQ at sea and delivering to shoreside processing plants (Option 2 in the CDP).* (A) Name, Federal fisheries permit number, and ADF&G number of the mothership, if applicable.

(B) Name and Federal processor permit of the shoreside processing plant, if applicable.

(C) The CDQ observer's haul or set number.

(D) Date gear retrieved by the catcher/processor, mothership, or catcher vessel as determined by the CDQ observer.

(E) The total weight to the nearest 0.001 mt for groundfish CDQ and halibut PSQ, the product code and product weight for halibut CDQ, and the total number of salmon PSQ and crab PSQ. The weight of halibut CDQ and halibut PSQ must be reported separately and the CDQ catch report must identify whether sablefish CDQ accrues against the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve as defined at § 679.20(b)(1)(iii).

(3) *Halibut CDQ.* All halibut CDQ harvested by vessels while groundfish CDQ fishing as defined at § 679.2 must be reported on the CDQ delivery report and on the CDQ catch report.

7. In § 679.7, paragraph (d) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) *CDQ.* (1) Participate in a Western Alaska CDQ program in violation of this part.

(2) Fail to submit, submit inaccurate information on, or intentionally submit false information on any report, application, or statement required under this part.

(3) Participate as a community in more than one CDP, unless the second CDP is for vessels fishing halibut CDQ only.

(4) Harvest groundfish CDQ or halibut CDQ or PSQ on behalf of a CDQ group with a vessel that is not listed as an eligible vessel on an approved CDP for that CDQ group.

(5) For a CDQ group, exceed a CDQ, halibut PSQ, or crab PSQ.

(6) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(7) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(8) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 after the CDQ group's chinook salmon PSQ is attained.

(10) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-chinook salmon PSQ is attained.

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.29 m) LOA, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP.

(12) For the operator of a vessel using trawl gear, release CDQ catch from the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, ''codend dumping'' and ''codend bleeding.''

(13) For the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with moratorium groundfish species.

(14) For the operator of a catcher/processor, catch groundfish CDQ species together with moratorium groundfish species in the same haul, set, or pot.

(15) For the operator of a catcher/processor or a catcher vessel required to carry a CDQ observer, combine catch from two or more CDQ groups or from CDQ and IFQ in the same haul or set.

(16) Use any groundfish CDQ species as a basis species for calculating retainable bycatch amounts under § 679.20.

(17) For the operator of a catcher/processor using trawl gear or a mothership, harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel.

(18) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel.

(19) For the operator of a catcher/processor using trawl gear or a mothership, sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b).

(20) For the operator of a vessel required to have a scale to weigh total catch or an observer sampling scale, harvest or take deliveries of CDQ or PSQ species if any scale fails to meet the daily test requirements described at § 679.28(b)(3).

(21) For the manager of a shoreside processor or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(b), fail to weigh catch on a scale that meets the requirements of § 679.28(b).

(22) For the operator of a catcher/processor or mothership that is required elsewhere in this part to provide certified bins for volumetric estimates that meet the requirements of § 679.28(e), fail to provide bins that meet the requirements of § 679.28(e).

(23) For a CDQ representative, use methods other than those approved in the CDP to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(24) For the operator of a vessel using trawl gear, harvest pollock CDQ in 1998 with trawl gear other than pelagic trawl gear.

(25) For a CDQ group, report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(26) For the operator of a vessel, harvest halibut CDQ with other than fixed gear.

(27) For a CDQ group, fail to ensure that all vessels and processors listed as eligible on the CDQ group's approved CDP comply with all regulations in this part while fishing for CDQ.

(28) Fail to comply with the requirements of a CDP.

* * * * *

8. Section 679.21 is amended by making the following changes:

a. Paragraphs (b)(2)(ii) and (b)(3) are revised;

b. The introductory text of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and paragraphs (e)(1)(iv) through (e)(1)(vii) are redesignated as the introductory text of paragraphs (e)(1)(ii), (e)(1)(iii), (e)(1)(iv) and paragraphs (e)(1)(v) through (viii), respectively;

c. New paragraph (e)(1)(i) introductory text is added;

d. Newly redesignated paragraph (e)(1)(viii) and paragraph (e)(2) are revised;

e. Paragraph (e)(3) is removed;

f. Paragraphs (e)(4) through (e)(9) are redesignated as paragraphs (e)(3) through (e)(8) respectively; and

g. Newly redesignated paragraphs (e)(3)(i) and (e)(4)(i) are revised. The newly added and revised text reads as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition. The following exceptions are made:

(A) Salmon prohibited species catch in the BSAI groundfish fisheries under paragraph (c) of this section and § 679.26; and

(B) Salmon PSQ caught by catcher vessels using trawl gear in the CDQ fisheries under subpart C of this part.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section, § 679.26, or for salmon PSQ retained by catcher vessels using trawl gear in the CDQ fisheries, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(e) * * *

(1) * * *

(i) *PSQ reserve.* 7.5 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (v), (e)(1)(vii), and (e)(1)(viii) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

* * * * *

(viii) *Non-chinook salmon.* The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

(2) *Nontrawl gear, halibut.* (i) The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is the amount of halibut equivalent to 900 mt of halibut mortality.

(ii) 7.5 percent of the nontrawl gear halibut PSC limit set forth in paragraph (e)(2)(ii) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(3) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserve, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) 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.

* * * * *

(4) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserve, may apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2)(i) of this section into bycatch allowances for nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

* * * * *

§ 679.21 [Amended]

9. In addition to the amendments set forth above, § 679.21 is amended by making the following changes:

a. In newly redesignated paragraph (e)(1)(ii) introductory text, the reference to paragraph (e)(1)(i)(A) is removed and a reference to (e)(1)(iii)(A) is added in its place.

b. In newly redesignated paragraph (e)(1)(iii) introductory text, the reference to (e)(1)(ii)(A) is removed and a reference to (e)(1)(iii)(A) is added in its place.

c. In newly redesignated paragraph (e)(3)(i), the references to (e)(1)(i) through (vii) are removed and references to (e)(1)(ii) through (viii) are added in their place.

d. In newly redesignated paragraph (e)(3)(ii)(B)(*2*), the reference to (e)(1)(i) is removed and a reference to (e)(1)(ii) is added in its place.

10. In § 679.22, a new paragraph (h) is added to read as follows:

§ 679.22 Closures.

* * * * *

(h) *CDQ Fisheries.* See § 679.7(d)(6) through (10) for time and area closures that apply to the CDQ fisheries once salmon and crab PSQ amounts have been reached.

11. In § 679.23, the headings of paragraphs (e)(3)(i) and (ii) are revised, and paragraph (e)(3)(iv) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(3) * * *

(i) *Halibut CDQ.* * * *

(ii) *Sablefish CDQ.* * * *

* * * * *

(iv) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1, through the end of each fishing year, except as provided in paragraph (c) of this section, and in 1998 when fishing for groundfish CDQ species other than fixed gear sablefish is authorized from 1200 hours, A.l.t., October 1, through the end of the fishing year.

* * * * *

12. In § 679.28, paragraph (a) is revised, and new paragraphs (c) through (e) are added to read as follows:

§ 679.28 Equipment and operational requirements for catch weight measurement.

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, and bins for volumetric estimates approved by NMFS and requirements for scales approved by the State of Alaska. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

* * * * *

(c) *Scales approved by the State of Alaska.* Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statutes 45.75 must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* The scale and scale display must be visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be able to read the scale display at all times.

(3) *Printed scale weights.* Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in § 679.5(a)(15).

(d) *Observer sampling station*—(1) *Accessibility.* All of the equipment required for an observer sampling station must be available to the observer at all times while a sampling station is required and the observer is aboard the vessel, except that the observer sampling scale may be used by vessel personnel to conduct material tests of the scale used to weigh total catch under paragraph (b)(3) of this section, as long as the use of the observer's sampling scale by others does not interfere with the observer's sampling duties.

(2) *Location*—(i) *Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer samples unsorted catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the location where fish are brought on board the vessel, unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer samples unsorted catch. NMFS will approve an alternative location if the vessel owner submits a written proposal describing the alternative location, the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and if the proposed observer sampling station meets all other applicable requirements of this section.

(3) *Minimum work space.* The observer must have a working area at least 1.8 m wide by 2.5 m long, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright in the area in front of the table and scale.

(4) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area used for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(5) *Observer sampling scale.* The observer sampling station must include an electronic motion-compensated platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include floor grating, adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch.* On motherships and catcher/processors using trawl gear, the conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located after the scale used to weigh total catch so that the observer can use this scale to weigh large samples.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions. If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The time and place of the inspection may be arranged by submitting to NMFS a written request for an inspection. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection, including the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Street address, business 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.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all CDQ and PSQ will be weighed, the location where observers will sample unsorted catch, the location of the observer sampling station as described at paragraph (d) of this section, including the observer sampling scale, the name of the manufacturer, model of the scale to weigh total catch, and the observer sampling scale.

(H) 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.

(I) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

(ii) *Where will observer sampling station inspections be conducted?* Inspections will be conducted on vessels tied up at docks in Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(iii) *Observer sampling station inspection report.* An observer sampling station inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the observer sampling station meets the requirements in this paragraph (d). The vessel owner must maintain a current observer sampling station inspection report on board the vessel at all times when the vessel is required to provide an observer sampling station approved for use under this paragraph (d). The observer sampling station inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(e) *Certified bins for volumetric estimates of catch weight*—

(1) *Certification.* The information required in this paragraph (e) must be prepared, dated, and signed by a licensed engineer with no financial interest in fishing, fish processing, or fish tendering vessels. Complete bin certification documents must be submitted to the Regional Administrator prior to harvesting or receiving groundfish from a fishery in which certified bins are required and must be on board the vessel and available to the observer at all times.

(2) *Specifications*—(i) *Measurement and marking.* The volume of each bin must be determined by accurate measurement of the internal dimensions of the bin. The internal walls of the bin must be permanently marked and numbered in 10-cm increments indicating the level of fish in the bin in

cm. All marked increments and numerals must be readable from the outside of the bin through a viewing port or hatch at all times. Marked increments are not required on the wall in which the viewing port is located, unless such increments are necessary to determine the level of fish in the bin from another viewing port. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by an observer or authorized officer. For bin certification documents dated after July 6, 1998, the numerals at the 10-cm increment marks must be at least 4 cm high.

(ii) *Viewing ports.* Each bin must have a viewing port or ports from which the internal bin markings and numerals on all walls of the bin can be seen from the outside of the bin, except that bin markings and numerals are not required on the wall in which the viewing port is placed, if that wall cannot be seen from any other viewing port in the bin.

(3) *Information required.* For bin certification documents submitted after July 6, 1998, the person certifying the bins must provide:

(i) The vessel name;

(ii) The date the engineer measured the bins and witnessed the location of the marked increments and numerals;

(iii) A diagram, to scale, of each bin showing the location of the marked increments on each internal wall of the bin, the location, and dimensions of each viewing port or hatch, and any additional information needed to estimate the volume of fish in the bin;

(iv) Tables indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins;

(v) Instructions for determining the volume of fish in each bin from the marked increments and table; and

(vi) The person's name and signature and the date on which the completed bin certification documents were signed.

(4) *Recertification.* The bin's volume and the marked and numbered increments must be recertified if the bin is modified in a way that changes its size or shape or if marking strips or marked increments are moved or added.

(5) *Operational requirements*—(i) *Placement of catch in certified bins.* All catch must be placed in a bin certified under this paragraph (e) to estimate total catch weight prior to sorting. Refrigerated seawater tanks may be used for volumetric estimates only if the tanks comply with all other requirements of this paragraph (e). No adjustments of volume will be made for the presence of water in the bin or tank.

(ii) *Prior notification.* Vessel operators must notify observers prior to any removal of fish from or addition of fish to each bin used for volumetric measurements of catch so that an observer may make bin volume estimates prior to fish being removed from or added to the bin. Once a volumetric estimate has been made, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric estimates of catch weight until an observer indicates that bin volume estimates have been completed and any samples of catch required by the observer have been taken.

(iii) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(iv) The bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

13. Section 679.30 is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) *Application procedure.* The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) *Project description.* A detailed description of all proposed CDQ projects, including the short-and long-term benefits to the qualified applicant from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) *Project schedule.* A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) *Employment.* The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) *Community eligibility.* A list of the participating communities. Each participating community must be listed in Table 7 to this part or meet the criteria for an eligible community under § 679.2.

(v) *Community support.* A demonstration of each participating community's support for the qualified applicant and the managing organization through an official letter approved by the governing body of each such community.

(2) *Managing organization information.* A proposed CDP must include the following information about the managing organization:

(i) *Structure and personnel.* A description of the management structure and key personnel of the managing organization, such as resumes and references, including the name, address, fax number, and telephone number of the qualified applicant's CDQ representative.

(ii) *Management qualifications.* A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) *Legal relationship.* Documentation of the legal relationship between the qualified applicant and the managing organization (if the managing organization is different from the qualified applicant) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) *Board of directors.* The name, address, and telephone number of each member of the board of directors of the qualified applicant. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.

(3) *Business information.* A proposed CDP must include the following business information:

(i) *Business relationships.* A description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project or subsidiary venture, including, but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) *Profit sharing.* A description of all profit sharing arrangements.

(iii) *Funding.* A description of all funding and financing plans.

(iv) *General budget for implementing the CDP.* A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) *Financial statement for the qualified applicant.* The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) *Organizational chart.* A visual representation of the qualified applicant's entire organizational structure, including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity for all divisions, subsidiaries, joint ventures, and partnerships; state of registration of the legal entity; and percentage owned by the qualified applicant.

(4) *Request for CDQ and PSQ allocations.* A list of the percentage of each CDQ reserve and PSQ reserve, as defined at § 679.31(a) through (e), that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

(5) *Fishing plan for groundfish and halibut CDQ fisheries.* The following information must be provided for all vessels and processors that will be harvesting or processing groundfish and halibut CDQ.

(i) *List of eligible vessels and processors*—(A) *Vessels*—(*1*) *Information required for all vessels.* A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership) for each vessel that will be used to catch or process CDQ. For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from the moratorium under § 679.4(c)(3)(v) *must be identified as such.*

(2) *Information required for observed vessels using trawl or hook-and-line gear and motherships taking deliveries from these vessels.* For each catcher/processor and catcher vessel 60 ft (18.29 m) LOA or greater using trawl or hook-and-line gear and not delivering unsorted codends, or for each mothership, the CDP must include the following information that will be used by NMFS to determine whether sufficient observer coverage is provided to sample each CDQ haul, set, or delivery. Provide the information for groundfish CDQ fishing as defined under § 679.2 and provide separate information by management area or fishery if information differs among management areas or fisheries.

(*i*) Number of CDQ observers that will be aboard the vessel. For catcher/processors using hook-and-line gear proposing to carry only one CDQ observer, the CDP must include vessel logbook or observer data that demonstrates that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day.

(*ii*) Average and maximum number of hauls, sets, or pots that will be retrieved on any given fishing day while groundfish CDQ fishing.

(*iii*) For vessels using trawl gear, the average and maximum total catch weight for any given haul while groundfish CDQ fishing.

(*iv*) For vessels using trawl gear, the number of hours necessary to process the average and maximum haul size while groundfish CDQ fishing.

(*v*) For vessels using hook-and-line gear, the average number of hooks in each set and estimated time it will take to retrieve each set while groundfish CDQ fishing.

(*vi*) Whether any halibut CDQ will be harvested by vessels groundfish CDQ fishing.

(B) *Shoreside processors or buying stations.* A list of the name, Federal processor permit number, and location of each shoreside processor or buying station that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, CDQ catch.

(C) *Buyers of halibut CDQ.* A list of processors or registered buyers of halibut CDQ that are not required to have a Federal processor permit under § 679.4(f), including the name of the buyer or processor, mailing address, telephone number, and location where halibut CDQ will be landed.

(ii) *Sources of data or methods for estimating CDQ and PSQ catch.* The sources of data or methods that will be used to determine catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at § 679.32(d)(2) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP must also specify whether the vessel will be retaining all groundfish CDQ catch (Option 1) or will be discarding some groundfish CDQ catch at sea (Option 2). The qualified applicant may propose the use of an alternative method such as the sorting and weighing of all catch by species on processor vessels or using larger sample sizes than could be collected by one observer. NMFS will review the proposal and approve it or notify the qualified applicant in writing if the proposed alternative does not meet these requirements. The qualified applicant may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the approved CDP by substantial amendment at a later date. Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the alternative proposal to determine if it meets all of the following requirements:

(A) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(B) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(C) Any proposal to sort catch before it is weighed must assure that the sorting and weighing process will be monitored by an observer; and

(D) The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(iii) *Amendments to the list of eligible vessels and processors.* The list of eligible vessels and processors may be amended by submitting the information required in paragraphs (a)(5)(i) and (ii) of this section as an amendment to the approved CDP. A technical amendment may be used to remove any vessel from a CDP, to add any vessel to a CDP if the CDQ group will use NMFS' standard

sources of data to determine CDQ and PSQ catch for the vessel, or to add any vessel to a CDP for which an alternative method of determining CDQ and PSQ catch has been approved by NMFS under an approved CDP for another CDQ group. A substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch for NMFS review.

(6) *CDQ planning*—(i) *Transition plan.* A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries. The plan for transition to self-sufficiency must be based on the qualified applicant's long-term revenue stream without CDQs.

(ii) *Post-allocation plan.* [Reserved]

(b) *Public hearings on CDQ application.* When the CDQ application period has ended, the State must hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

(c) *Council consultation.* Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council and make available, upon request, the proposed CDPs that are not part of the State's recommendations.

(d) *Review and approval of proposed CDPs.* The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, except in 1998, when CDPs for the 1998 through 2000 multispecies groundfish CDQs must be submitted by July 6, 1998. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

(e) *Transfer.* CDQ groups may request that NMFS transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one group to another by each group filing an appropriate amendment to its CDP. Transfers of CDQ and PSQ allocations must be in whole integer percentages, and transfers of CDQ and PSQ must be in whole integer amounts. If NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred. NMFS will not approve transfers to cover overages of CDQ or PSQ.

(1) *CDQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) *CDQ.* CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's initial CDQ amount for that year, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's initial CDQ amount for the year, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) *PSQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation, and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS from January 1 through January 31. Requests for transfers of a PSQ allocation will not be accepted by NMFS at other times of the year. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(4) *PSQ.* CDQ groups may request that NMFS transfer any or all of one group's PSQ for one calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of CDQ, and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS from January 1 through January 31. Requests for transfers of PSQ will not be accepted by NMFS at other times of the year. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(f) *CDQ group responsibilities.* A CDQ group's responsibilities include, but are not limited to, the following:

(1) Direct and supervise all activities of the managing organization;

(2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times;

(3) Monitor the catch of each CDQ or PSQ;

(4) Submit the CDQ catch report described at § 679.5(n)(2);

(5) Ensure that no CDQ, halibut PSQ, or crab PSQ is exceeded;

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

(i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring;

(ii) Provide for the communication of observer data from their vessels to NMFS and the CDQ representative;

(iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ;

(iv) Cease fishing operations when requested by the CDQ group; and

(v) Comply with all requirements of this part while harvesting or processing CDQ species.

(7) Comply with all requirements of this part.

(g) *Monitoring of CDPs*—(1) *Annual progress report.* (i) The State must submit to NMFS, by October 31 of each year, an annual progress report for the previous calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) *Annual budget report.* (i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) *Annual budget reconciliation report.* A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section.

(4) *Substantial amendments.* A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ, which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e)(2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

(v) The request for approval of a substantial amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text, with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted, with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved, along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) *Technical amendments.* Any change to a CDP that is not considered a substantial amendment under paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a copy of the pages of the CDP that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when, after review, NMFS notifies the State in writing of the technical amendment's receipt and approval.

(h) *Suspension or termination of a CDP.* An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease

will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.

(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.

(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of its receipt. In the case of suspension or termination, NMFS will publish notification in the **Federal Register**, with reasons thereof.

14. In § 679.31, the section heading and paragraph (e) are revised, and a new paragraph (g) is added to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(e) *PSQ reserve.* (See § 679.21(e)(1)(i) and (e)(2)(ii)).

* * * * *

(g) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each squid, arrowtooth flounder, and ''other species'' CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group's squid, arrowtooth flounder, or ''other species'' CDQ is a technical amendment as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

15. Section 679.32 is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability.* (1) The CDQ group and the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of this section for all CDQ and PSQ caught while groundfish CDQ fishing as defined at § 679.2, with the exceptions listed in paragraphs (a)(2) and (a)(3) of this section. In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

(2) *Pollock CDQ fishing in 1998 (applicable through December 31, 1998).* Regulations governing the catch of pollock CDQ while pollock CDQ fishing as defined in § 679.2 in 1998 are in paragraph (e) of this section. The catch of pollock by vessels that are not pollock CDQ fishing as defined in § 679.2 will not accrue against the pollock CDQ in 1998.

(3) *Fixed gear sablefish and halibut CDQ fishing in 1998 (applicable through December 31, 1998).* Regulations governing the catch of sablefish and halibut CDQ by vessels using fixed gear in 1998 are in paragraph (f) of this section.

(b) *PSQ catch.* Time and area closures required once a CDQ group has reached its salmon PSQ or crab PSQ are listed in § 679.7(d)(7) through (10). The catch of salmon or crab by vessels using other than trawl gear does not accrue to the PSQ for these species. The discard of halibut by vessels using pot or jig gear will not accrue to the halibut PSQ if this bycatch has been exempted from the halibut PSC limit under § 679.21(e)(5) in the annual specifications published in the **Federal Register**.

(c) *Requirements for vessels and processors.* In addition to complying with the minimum observer coverage requirements at § 679.50(c)(4), operators of vessels groundfish CDQ fishing and managers or operators of shoreside processing plants or buying stations taking deliveries from vessels groundfish CDQ fishing must comply with the following requirements:

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.29 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section. All halibut PSQ and crab PSQ must be discarded at sea. Operators of catcher vessels using trawl gear must report the at-sea discards of halibut PSQ or crab PSQ on the CDQ delivery report. Operators of catcher vessels using nontrawl gear must report the at-sea discards of halibut PSQ on the CDQ delivery report, unless exempted from accounting for halibut PSQ under paragraph (b) of this section.

(ii) *Catcher vessels delivering unsorted codends.* Operators of catcher vessels delivering unsorted codends to trawl catcher/processors or motherships must retain all CDQ and PSQ species and deliver them to a catcher/processor or mothership that meets the requirements of paragraph (c)(4) of this section.

(2) *Catcher vessels with observers.* Operators of catcher vessels equal to or greater than 60 ft (18.29 m) LOA must comply with the following requirements:

(i) *If using trawl gear, the vessel operator must:*

(A) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section;

(B) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by a CDQ observer; and

(C) Provide space on the deck of the vessel for the CDQ observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(ii) *If using nontrawl gear, the vessel operator must either:*

(A) *Option 1: Retain all CDQ species.* Retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section and have all of the halibut PSQ counted by the CDQ observer and sampled for length or average weight; or

(B) *Option 2: Discard some CDQ species at sea.* May discard some CDQ species at sea if the following requirements are met:

(1) *Observer sampling station.* The vessel owner provides an observer sampling station that complies with § 679.28(d) so that the CDQ observer can accurately determine the average weight of discarded CDQ species. A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required; and

(2) *Species composition.* Each CDQ set on vessels using hook-and-line gear is sampled for species composition by a CDQ observer.

(3) *Shoreside processors and buying stations.* The operator of a buying station or the manager of a shoreside processor must comply with all of the following requirements:

(i) *Prior notice to observer of offloading schedule.* Notify the CDQ observer of the offloading schedule of each groundfish CDQ delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the sorting and weighing of the entire delivery.

(ii) *CDQ and PSQ by weight.* Sort and weigh on a scale approved by the State of Alaska under § 679.28(c) all groundfish and halibut CDQ or PSQ by species or species group.

(iii) *PSQ by number.* Sort and count all salmon and crab PSQ.

(iv) *CDQ and PSQ sorting and weighing.* Sorting and weighing of CDQ and PSQ must be monitored by a CDQ observer.

(v) *CDQ delivery report.* Submit a CDQ delivery report described at § 679.5(n)(1) for each delivery from vessels groundfish CDQ fishing as defined at § 679.2.

(4) *Catcher/processors and motherships.* The operator of a catcher/processor or a mothership must comply with the following requirements:

(i) *Prior notice to observer of CDQ catch.* Notify the CDQ observer(s) before CDQ catch is brought onboard the vessel and notify the CDQ observer(s) of the CDQ group and CDQ number associated with the CDQ catch.

(ii) *Observer sampling station.* Provide an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required.

(iii) *Catcher/processors using trawl gear and motherships.* The operator of a catcher/processor using trawl gear or of a mothership must weigh all catch on a scale that complies with the requirements of § 679.28(b). A valid scale inspection report described at § 679.28(b)(2) must be on board the vessel at all times when a scale is required. Catch from each CDQ haul must be weighed separately. Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel in the CDP. Each CDQ haul must be sampled by a CDQ observer for species composition and the vessel operator must allow CDQ observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

(iv) *Catcher/processors using nontrawl gear.* Each CDQ set on a vessel using hook-and-line gear must be sampled by a CDQ observer for species composition and average weight.

(d) *Recordkeeping and reporting*—(1) *Catch record.* The operator or manager of a buying station and the manager of a shoreside processor must submit to NMFS the CDQ delivery report required in § 679.5(n)(1). The CDQ representative must submit to NMFS the CDQ catch report required in § 679.5(n)(2). Additionally, all other applicable requirements in § 679.5 for groundfish fishing must be met.

(2) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to determine CDQ and PSQ catch on the CDQ catch report by specifying ''NMFS standard sources of data'' in their CDP. In the case of a catcher vessel using nontrawl gear, the CDP must specify whether the vessel will be retaining all groundfish CDQ (Option 1) or discarding some groundfish CDQ species at sea (Option 2). CDQ species may be discarded at sea by these vessels only if the requirements of paragraph (c)(2)(ii)(B) of this section are met. NMFS will use the following sources to verify the CDQ catch reports, unless an alternative catch estimation procedure in the CDP is approved by NMFS under § 679.30(a)(5)(ii).

(i) *Catcher vessels less than 60 ft (18.29 m) LOA.* The weight or numbers of all CDQ and PSQ species will be the same as the information on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel, delivered to a shoreside processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(ii) *Catcher vessels delivering unsorted codends.* The weight and numbers of CDQ and PSQ species will be determined by applying the species composition sampling data collected for each CDQ haul by the CDQ observer on the mothership to the total weight of each CDQ haul as determined by weighing all catch from each CDQ haul on a scale approved under § 679.28(b).

(iii) *Observed catcher vessels using trawl gear.* The weight of halibut and numbers of crab PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight or numbers of all groundfish CDQ and salmon PSQ will be the same as the information submitted on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel until delivered to a processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(iv) *Observed catcher vessels using nontrawl gear*—(A) *Option 1.* The weight of halibut PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight of all groundfish CDQ will be the same as the information submitted on the CDQ delivery report if all CDQ species are retained on board the vessel until delivered to a processor, and sorted and weighed in compliance with paragraph (c)(3) of this section (Option 1); or

(B) *Option 2.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight if any CDQ species are discarded at sea.

(v) *Catcher/processors using trawl gear and motherships.* The weight and numbers of CDQ and PSQ species will be determined by applying the CDQ observer's species composition sampling data for each CDQ haul to the total weight of the CDQ haul as determined by weighing all catch from each CDQ haul on a scale certified under § 679.28(b).

(vi) *Catcher/processors using nontrawl gear.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea.

(e) *Pollock CDQ (applicable through December 31, 1998)*—(1) *Applicability.* The owner or operator of a vessel pollock CDQ fishing as defined at § 679.2 and the owner or operator of a processor taking deliveries from vessels pollock CDQ fishing must comply with the requirements of this paragraph (e).

(2) *Catch of non-pollock.* The catch of all non-pollock species for which a TAC or PSC limit is specified will accrue against the TACs and PSC limits for moratorium groundfish species. The owner or operator of a vessel that is pollock CDQ fishing and the owner or operator of a processor taking deliveries from vessels that are pollock CDQ fishing must comply with regulations governing maximum retainable bycatch amounts and prohibited species status in the moratorium groundfish fisheries at § 679.20(d)(1)(iii).

(3) *Recordkeeping and reporting.* The CDQ representative, the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must submit all applicable reports in § 679.5, including the CDQ delivery report and the CDQ catch report. Catch from the pollock CDQ fisheries must be identified separately from catch in other CDQ fisheries on the CDQ catch report. Harvest of species other than pollock in the pollock CDQ fisheries must not be reported on the CDQ catch report.

(4) *Observer coverage.* Two observers are required on all catcher/processors and motherships harvesting, processing, or taking deliveries of pollock CDQ; one observer is required on all catcher vessels harvesting pollock CDQ; and one observer is required in a shoreside processing plant while pollock CDQ is being delivered, sorted, or processed.

(5) *Estimation of the weight of pollock CDQ*—(i) *Shoreside processors and buying stations.* All pollock CDQ delivered to a shoreside processor or buying station must be weighed on a scale approved by the State of Alaska under § 679.28(c). The manager of each shoreside processor or buying station must notify the observer of the

offloading schedule of each pollock CDQ delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) *Motherships and catcher/processors.* Operators of motherships and catcher/processors must provide holding bins and comply with the operational requirements at § 679.28(e) in order for volumetric estimates of total catch weight to be made.

(f) *Sablefish and halibut CDQ fisheries (applicable through December 31, 1998)*—(1) *Applicability.* The owner or operator of a vessel or processor harvesting or accepting deliveries of fixed gear sablefish or halibut CDQ in 1998 must comply with the requirements of this paragraph (f).

(2) *Catch of other groundfish.* All groundfish for which a TAC is specified and all prohibited species caught while fixed gear sablefish and halibut CDQ fishing will accrue against the TACs and PSC limits for moratorium groundfish species. Regulations governing maximum retainable bycatch amounts and prohibited species status in the moratorium groundfish fisheries at § 679.20(d)(1)(iii) must be complied with while fixed gear sablefish and halibut CDQ fishing.

(3) *Permits.* The managing organization responsible for carrying out an approved CDP must have a halibut and/or sablefish CDQ permit issued by the Regional Administrator. A copy of the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by, or for, the managing organization and be made available for inspection by an authorized officer. Such halibut and/or sablefish CDQ permit is non-transferable and is effective for the duration of the CDP or until revoked, suspended, or modified.

(4) *CDQ cards.* All individuals named on an approved CDP application must have a valid halibut and/or sablefish CDQ card issued by the Regional Administrator before landing any halibut and/or sablefish. Each halibut and/or sablefish CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut and/or sablefish for debit against its CDQ allocation.

(5) *Alteration.* No person may alter, erase, or mutilate a halibut and/or sablefish CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated is invalid.

(6) *Landings.* Halibut and/or sablefish harvested pursuant to an approved CDP may be landed only by a person with a valid halibut and/or sablefish CDQ card, delivered only to a person with a valid registered buyer permit, and reported in compliance with § 679.5(l)(1) and (l)(2).

(7) *Recordkeeping and reporting.* Vessels and processors with Federal fisheries or processor permits under § 679.4(f) must report all catch of groundfish, including sablefish CDQ, and prohibited species from the fixed gear sablefish and halibut CDQ fisheries on logbooks and weekly production reports required under § 679.5.

§§ 679.33 and 679.34 [Removed]

16. Sections 679.33 and 679.34 are removed.

17. In § 679.50, the section heading and the last sentence of paragraph (a) are revised, and paragraphs (c)(4), (d)(4), (h)(1)(i)(D), and (h)(1)(i)(E) are added to read as follows:

§ 679.50 Groundfish Observer Program.

(a) * * * Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(4) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

* * * * *

(c) *Observer requirements for vessels.* * * *

(4) *Groundfish CDQ fisheries.* Except as provided for under § 679.32(e), the owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(i) *Motherships or catcher/processors using trawl gear.* A mothership or catcher/processor using trawl gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(ii) *Catcher/processors using hook-and-line gear.* A catcher/processor using hook-and-line gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, unless NMFS approves a CDP authorizing the vessel to carry only one CDQ observer. At least one of the CDQ observers must be certified as a lead CDQ observer. A CDP authorizing the vessel to carry only one lead CDQ observer may be approved by NMFS if the CDQ group supplies vessel logbook or observer data that demonstrates that one CDQ observer can sample each CDQ set for species composition in one 12-hour shift per fishing day. NMFS will not approve a CDP that would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(iii) *Catcher/processors using pot gear.* A catcher/processor using pot gear must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(iv) *Catcher vessel.* A catcher vessel equal to or greater than 60 ft (18.29 m) LOA, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(d) *Observer requirements for shoreside processors.* * * *

(4) *Groundfish CDQ fisheries.* Each shoreside processor required to have a Federal processor permit under § 679.4(f) and taking deliveries of CDQ or PSQ from vessels groundfish CDQ fishing as defined at § 679.2 must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(D) For purposes of the groundfish CDQ fisheries, a NMFS-certified CDQ observer must meet the following requirements.

(*1*) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection.

(*2*) Receive the rating of 1 for ''meets expectations'' or 2 for ''exceptional'' by NMFS for his or her most recent deployment.

(*3*) Successfully complete a NMFS-approved CDQ observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(*4*) Comply with all of the other requirements of this section.

(E) In addition to the requirements in paragraph (h)(1)(i)(D) of this section, to

be certified as a ''lead CDQ observer'', an observer must meet the following requirements.

(*1*) A ''lead CDQ observer'' on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or a mothership.

(*2*) A ''lead CDQ observer'' on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(*3*) A ''lead CDQ observer'' on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(*4*) A ''lead CDQ observer'' in a shoreside processing plant must have observed at least 30 days in a shoreside processing plant.

* * * * *

[FR Doc. 98–14596 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–22–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE83

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listing of Impairments (the listings) under the Social Security and supplemental security income (SSI) programs. This rule extends the dates on which several body system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on impairments in these body systems at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: We use the listings in appendix 1 (Listing of Impairments) to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into parts A and B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule, we are extending the dates on which several body system listings will no longer be effective to July 1, 1999. These body system listings are: Growth Impairment (100.00), Special Senses and Speech (2.00 and 102.00), Multiple Body Systems (110.00), Neurological (11.00 and 111.00), and Immune System (14.00 and 114.00).

We last published final rules setting forth the current expiration date for the Multiple Body Systems and the Immune System on July 2, 1993 (58 FR 36008). We last extended the dates on which the other body system listings would no longer be effective in final rules published as follows:

December 6, 1993 (58 FR 64121): Special Senses and Speech and Neurological.

December 6, 1996 (61 FR 64615): Growth Impairment.

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is medically equivalent in severity to an impairment in the listings or functionally equivalent to the listings in SSI claims based on disability filed by individuals under age 18, we will find that the individual is disabled at the third step of the sequential evaluation process. Nevertheless, we have decided to review, over the next 12 months, the need to revise these listings and have, therefore, decided to extend the dates on which each of these listings will no longer be effective to July 1, 1999.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory guidelines for assessing impairments in these body systems at the third step of the sequential evaluation processes after the current expiration dates of the listings. In order to ensure that we continue to have regulatory criteria for assessing impairments under these listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet