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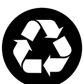
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA085/086/089/102/103—5046a; FRL–7427–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations. In this action, EPA is also correcting typographical errors and other errata currently found in the Identification of plan rule chart. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 10, 2003 without further notice, unless EPA receives adverse written comment by February 6, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at frankford.harold@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Between April 30, 1997 and June 22, 1999, the Commonwealth of Virginia submitted a series of formal revisions to its SIP. These SIP revisions consist of the addition of general administrative provisions and definitions (9 VAC 5, Chapter 170) submitted by Virginia on February 18, 1998, substantive and format revisions submitted by Virginia on March 4, 1998 regarding its general administrative provisions and definitions (9 VAC 5, Chapters 10 and 20), a revision submitted by Virginia on April 20, 1998 which further reorganizes and recodifies the format of the Commonwealth's general conformity requirements (9 VAC 5, Chapter 160), a revision submitted by Virginia on April 30, 1997 which revises the format of Virginia's oxygenated gasoline regulation (2 VAC 5, Chapter 480), and a revision submitted by Virginia on June 22, 1999 which amends the list of documents which Virginia incorporates by reference (9 VAC 5, Chapter 20, Regulation 5–20–21).

II. Summary of SIP Revisions

A. Substantive Revisions to Virginia's General Administrative Provisions and Definitions

On February 18, 1998 and March 4, 1998, Virginia submitted substantial revisions, both in terms of format and substance, to its general administrative provisions and definitions. Whereas Virginia's current SIP-approved administrative provisions are located in Part II of VR–120 or 9 VAC 5 Chapter 20, the revised structure splits these general administrative provisions into two major chapters—Chapter 20 (General Provisions) and Chapter 170 (Regulations for General Administration). The individual 9 VAC 5–170 Sections are organized below:

Chapter 170 citation	Regulation for general administration	Former citation in Chapters 20 and 160
Part I	Definitions	
5–170–10	Use of Terms	5–10–10
5–170–20	Terms Defined	5–10–20 5–160–20
Part II	General Provisions	
5–170–30	Applicability	5–20–10A.–C.
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Chapter 170 citation	Regulation for general administration	Former citation in Chapters 20 and 160
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In the February 18, 1998 and March 4, 1998 submittals, Virginia also adds or revises the following definitions of terms:

Added: Public Hearing, Regulation of the Board, These Regulations, Virginia Register Act.

Revised: Administrative Process Act, Consent Agreement, Consent Order, Director, Emergency Special Order, Good Engineering Practice, Order, Owner, Person, Pollutant, Source, Special Order, Virginia Air Pollution Control Law, Volatile Organic Compounds.

No Wording Changes; Revised Citations Only: Virginia has recodified the following definitions from 9 VAC 5–10–20 to 9 VAC 5–170–20: Administrative Process Act, Confidential Information, Variance, and Virginia Register Act. In addition, Virginia has placed duplicate versions of the following SIP definitions found elsewhere in 9 VAC 5 into Regulation 9 VAC 5–170–20: Air Pollution, Board, Department, Director, Emergency, Federal Clean Air Act, Locality, Virginia Air Pollution Control Law, and Virginia Motor Vehicle Emissions Control Law.

In addition to the recodification, Virginia made substantive revisions to the following provisions when compared to the wording of the comparable SIP-approved provisions formerly located in 9 VAC 5, Chapter 20: 5–170–30, 5–170–60, 5–170–120, 5–170–150, 5–170–160, and 5–170–170. Virginia revised the wording of these provisions to clarify the intent of the rules, or to conform with the statutory provisions of the Virginia Air Pollution Control Law. Virginia has also revised several definitions found in Regulation 5–170–20, also to clarify the intent of the term, or in order to conform with the wording and intent of the state statute. Virginia revised the definition of the term ''volatile organic compound'' to add perchloroethylene as an exempt VOC solvent, and substantively revised the wording of the definition of ''person'' when compared to that of the SIP-approved definition.

B. Revisions to Virginia's General Conformity Provisions

On April 20, 1998, Virginia revised its SIP-approved General Conformity rules (9 VAC 5 Chapter 160) which had been incorporated into the Virginia SIP at 40 CFR Section 52.2420(c)(118). These rules are revised by:

1. Revising 9 VAC 5–160–10 (General), Section B.
2. Revising the definition of ''Emergency'', as defined in 9 VAC 5–160–20.
3. Removing definitions and provisions from Chapter 160 which are now duplicated in Chapter 170. The definitions are for the terms Administrative Process Act, Confidential Information, Consent Agreement, Consent Order, Emergency Special Order, Formal Hearing, Order, Party, Public Hearing, Special order, Variance, and Virginia Register Act. The provisions are: Enforcement of Regulations and Orders (9 VAC 5–160–60), and Availability of Information (9 VAC 5–160–100).
4. Removing from Chapter 160 the following additional provisions: Establishment of Regulations and Orders (9 VAC 5–160–50), Hearings and Proceedings (9 VAC 5–160–70), and Appeals (9 VAC 5–160–100).

C. Documents Being Incorporated by Reference

On June 22, 1999, Virginia submitted revisions to the list of Federal, technical, and scientific documents which Virginia incorporates by reference. Virginia lists these documents in 9 VAC 5, Chapter 20 (General Provisions), Regulation 5–20–21. In this submittal, Virginia incorporates by reference the following technical and scientific documents:

1. D323–94, ''Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)'' from Section 5, Volume 05.01 of the 1989 Annual Book of American Society for Testing Materials (ASTM) Standards. (Replacing D323–82)
2. D97–93, ''Standard Test Method for Pour Point of Premium Oils'' from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards. (Replacing D97–87)
3. National Fire Prevention Association (NFPA) 385, Standard for Tank Vehicles for Flammable and Combustible Limits, 1990 Edition. (Replacing the 1985 Edition)
4. NFPA 30, Flammable and Combustible Liquids Code. 1993 Edition (Replacing the 1987 Edition).
5. NFPA 30A, Automotive and Marine Service Station Code, 1993 Edition (Replacing the 1987 Edition).

D. Recodification of Virginia's Oxygenated Gasoline Regulations

On April 30, 1997, Virginia submitted amendments to the Commonwealth's oxygenated gasoline regulations as a revision to the SIP. In a separate action, on February 17, 2000 (65 FR 8051), EPA had approved substantive revisions to Regulation 2 VAC 5–480–20 as a revision to the SIP. By this action, EPA is approving revisions to the SIP which recodify Virginia's oxygenated gasoline regulation from VR 115–04–28 Sections 1 and 3 through 8 to 2 VAC 5 Chapter 480, Regulations 2 VAC 5–480–10, and 5–480–30 through 5–480–80, respectively. These revisions are summarized in the following chart:

2 VAC 5 CHAPTER 480—REGULATION GOVERNING THE OXYGENATION OF GASOLINE

New SIP citation	Title	Current SIP citation
5–480–10	Definitions	VR115–04–28, section 1.
5–480–30	Minimum oxygenate content	VR115–04–28, section 3.
5–480–40	Nature of oxygenates	VR115–04–28, section 4.
5–480–50	Recordkeeping transfer requirements	VR115–04–28, section 5.
5–480–60	Gasoline pump labeling	VR115–04–28, section 6.
5–480–70	Sampling, testing and oxygen content calculations	VR115–04–28, section 7.
5–480–80	Compliance and enforcement	VR115–04–28, section 8.

III. EPA's Evaluation of SIP Revisions

A. Definitions

EPA has reviewed Virginia's new and revised definitions and has determined that they are consistent with the statutory provisions of the Virginia Air Pollution Control Law and the comparable requirements of the Clean Air Act and 40 CFR part 51. Virginia revised the wording of several definitions in order to improve their clarity and intent. Virginia also has substantially revised the definition of ''Person'' in order to comply with revisions to ''Person'' found in chapter 13, section 10.1.1300 of Virginia's Air Pollution Control Law. EPA has determined that the same groups covered by the current SIP definition of ''Person'' are still covered under the wording of the revised definition, and therefore concludes that the revised definition of ''Person'' is equivalent in scope to the current SIP definition. Virginia has also revised the definition of ''Volatile Organic Compound'' by including perchloroethylene to the list of exempt compounds. EPA has determined that Virginia's revised definition is consistent with the definition of ''volatile organic compound'' found at 40 CFR 51.100(s).

B. New and Revised Administrative Provisions

EPA has reviewed the revisions to the administrative regulations of 9 VAC 5, Chapter 170, and has determined that the revised wording improves the clarity and intent of the provisions, streamlines the process of enforcing regulations, permits and orders, and defines the procedures for determining the applicability of a provision where conflicts between provisions apply. The revised regulations strengthen the public hearing process which local agencies must follow, and provide additional assurances that local ordinances will conform with the applicable state requirements.

C. Revised General Conformity Provisions

Virginia had amended its general conformity provisions so that the general and administrative provisions in 9 VAC 5 Chapter 160 would be combined with the identical provisions of 9 VAC 5, Chapter 170. Many of the definitions and administrative provisions in the SIP-approved version of 9 VAC 5, Chapter 160 make specific references to Federal agencies and their obligation to comply with state requirements. The comparative requirements of 9 VAC 5 Chapter 170 make no reference to Federal agencies. Instead, the term ''Owner'' is used in the place of ''Federal Agencies''. However, the term ''Owner'' refers to ''Person'' which by definition includes ''Governmental Bodies.'' EPA has determined this to be an equivalent substitution for ''Federal Agency.'' In addition, the term ''Owner'' also refers to ''Bodies Politic,'' which EPA interprets to include the Federal Government and its individual agencies. The term ''Department'' found in the 9 VAC 5–160 provisions is not found in the consolidated 9 VAC 5–170 rules—only the term ''Board.'' The SIP, however, has historically only conferred power to the Board. In addition, 40 CFR part 93 does not require ''Department'' to be included in Virginia's general conformity rules.

D. EPA's Evaluation of Revised Incorporation by Reference Provisions

In its support document accompanying the June 1999 SIP revision submittal, Virginia explained that the technical documents found in Regulation 9 VAC 5–20–21 are used to make technical evaluations related to new source review and emission standards for volatile organic compounds. Virginia revised the five documents listed above to reflect the latest available edition. EPA agrees that states should use the latest available technical documents to assist in their decisionmaking, and therefore finds these revisions to be acceptable.

E. Recodification of Virginia's Oxygenated Gasoline Regulations

The revisions to 2 VAC 5, Chapter 480, sections 2–480–10 and 2–480–30 through 2–480–80 consist only of changes to the citation format of Virginia's oxygenated gasoline rules. There are no substantive wording changes to the current SIP-approved provisions.

F. Impact of Virginia's Audit Privilege and Immunity Laws on These SIP Revisions

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

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity Law, Va. Code sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity

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

IV. Corrections to the Chart in 40 CFR 52.2020(c) Summarizing the Approved SIP Rules

On April 21, 2000 (65 FR 21513), EPA approved the revised incorporation by reference format for 40 CFR part 52, subpart VV, § 52.2420(c). This chart lists those Virginia regulations which EPA has incorporated by reference into the Virginia SIP as well as their effective dates in the Commonwealth. After review of the chart as published in the April 21, 2000 **Federal Register**, the Virginia Department of Environmental Quality informed EPA that the chart as published contained typographical errors, omissions, and inaccurate information. On July 6, 2000 (65 FR 41592) and July 14, 2000 (65 FR 43840), correction notices were published which corrected some, but not all, of the incorrect entries. This action corrects the remaining inaccurate entries to the chart in § 52.2420(c). These corrections revise information to air quality provisions which are not otherwise revised by the other SIP revisions being evaluated by EPA in this action. The information consists of corrected titles of the air quality regulations, corrected VAC citations, and corrected effective dates of some provisions, and are summarized below:

Federal Register page (65 FR)	Entry	Column title	Description of correction
21321	Chapter 20 General Provisions (Title)		Add ''[Part II]'' after ''Chapter 20 General Provisions''.
	5–20–160	State Effective Date	Remove the date ''7/1/97''.
	5–20–170	State Effective Date	Remove the date ''7/1/97''.
	5–20–180	State Effective Date	Remove the date ''7/1/97''.
21322	5–20–205	State Effective Date	Replace ''2/1/97'' with ''1/1/97''.
21323	5–40–50	State Effective Date	Replace ''7/1/97'' with ''4/17/95''.
	5–40–310A.–E.	Title/Subject	Replace ''Dioxide'' with ''Oxides''.
21324	4–40–450	State citation (9 VAC 5)	Replace ''4–40–450'' with ''5–40–450''.
	5–40–710	Explanation [Former SIP Citation]	Replace ''120–04–614.'' with ''120–04–0614.''.
	5–40–720	Explanation [Former SIP Citation]	Replace ''120–04–0613.'' with ''120–04–0615.''.
21340	5–80–10/Article 6	State citation (9 VAC 5)	Remove ''Article 6''.
21342	Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas (Title)		Add ''[ ]'' around ''120–08–03''.
	5–80–2000	Explanation [Former SIP Citation]	Replace ''03A.'' with ''.03A''.
	5–80–2080	Explanation [Former SIP Citation]	Replace ''.03I.'' with ''.03I''.
21343	5–9–150	State citation (9 VAC 5)	Replace ''5–9–150'' with ''5–91–150''.
21344	4–91–450	State citation (9 VAC 5)	Replace ''4–91–450'' with ''5–91–450''.
	4–91–460	State citation (9 VAC 5)	Replace ''4–91–460'' with ''5–91–460''.
21346	Chapter 160 General Conformity Rules (Title).	State Effective Date	Remove ''1/24/97''.

Similarly, on October 19, 2000 (65 FR 62626), EPA approved a revision to 9 VAC 5 Chapter 30 (Ambient Air Quality Standards). This revision removed section 9 VAC 5–30–20, the old ambient air quality standards for total suspended particulate matter (TSP) from the Virginia SIP. The intent of this action was to remove the entry for section 9 VAC 5–30–20 from the chart in 40 CFR 52.2420(c). This action will remove section 9 VAC 5–30–20 from the chart.

V. Final Action

EPA is approving the addition of 9 VAC 5, Chapter 170, as well as the revisions to 9 VAC 5 Chapters 10, 20, and 160 and 2 VAC 5, Chapter 480 as revisions to the Virginia SIP. EPA is also correcting the typographical errors, omissions and incorrect information found in the chart of previously-approved SIP actions found at 40 CFR 52.2420(c).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 10, 2003 without further notice unless EPA receives adverse comment by February 6, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to revise 9 VAC 5 chapters 10, 20, 30, 40, 80, 91, 160 and 170, and 2 VAC 5 chapter 480 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 17, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended:

a. Under Chapter 10 by revising the entry for 5–10–10; adding an entry for 5–10–20 at the end of the third entry for 5–10–20; and removing entry VR120–01–02.

b. Under Chapter 20 by revising entries 5–20–160, 5–20–170, 5–20–180, and 5–20–205; and removing entries 5–20–30A.–D., 5–20–60, 5–20–100, 5–20–110, 5–20–140, 5–20–150, VR120–02–14B.

c. Under Chapter 30 by removing entry 5–30–20.

d. Under Chapter 40 by removing entry 4–4–450 and revising entries 5–40–50, 5–40–310A.–E., 5–40–710, and 5–40–720.

e. Under Chapter 80 by revising entries 5–80–10/Article 6, 5–80–2000, and 5–80–2080.

f. Under Chapter 91 by removing entries 5–9–150, 4–91–450, and 4–91–460.

g. Under Chapter 160 by revising entries for 5–160–10 and 5–160–20; and removing entries 5–160–50, 5–160–60, 5–160–70, 5–160–90, and 5–160–100.

h. By adding a new Chapter 170 including headings, with numerical entries for Part I, Part II, Part V, and Part VI.

i. Under 2 VAC 5 Chapter 480 by removing entries VR115–04–28, Sec. 1, VR115–04–28, Sec. 3, VR115–04–28, Sec. 4, VR115–04–28, Sec. 5, VR115–04–28, Sec. 6, VR115–04–28, Sec. 7 and VR115–04–28, Sec. 8; and adding entries 5–480–10, 5–480–30, 5–480–40, 5–480–50, 5–480–60, 5–480–70, and 5–480–80.

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
		Chapter 10 General Definitions [Part 1]		
5–10–10	General	1/1/98	1/7/03 [Insert Federal Register page citation].	120–02–01 Sections 5–10–10A, B and C are revised
*	*	*	*	*
5–10–20	Terms Defined	1/1/98	1/7/03 [Insert Federal Register page citation].	Terms Added—Public hearing: Regulations for the Control and Abatement of Air Pollution, Regulation of the Board, These regulations. Terms Revised—Good Engineering Practice, Person, Volatile organic compound. Terms Deleted (moved to 9 VAC 5–170–20)—Administrative Process Act, Air quality control region, Air quality maintenance area, Confidential information, Consent agreement, Consent order, Emergency special order, Order, Special order, Variance.
*	*	*	*	*
		Chapter 20 General Provisions		
*	*	*	*	*
5–20–160	Registration	4/17/95	4/21/00 65 FR 21320.	120–02–31
5–20–170	Control Programs	4/17/95	4/21/00 65 FR 21320.	120–02–32
5–20–180	Facility and Control Equipment Maintenance or Malfunction	4/17/95	4/21/00 65 FR 21320.	120–02–34
*	*	*	*	*
5–20–205	Prevention of Significant Deterioration Areas.	1/1/97	3/23/98 65 FR 13795.	Former Appendix L—Effective 2/1/92.
*	*	*	*	*
		Chapter 40 Existing Stationary Sources [Part IV]		
		Part I Special Provisions		
*	*	*	*	*
5–40–50	Notification, Records and Reporting.	4/17/95	4/21/00 65 FR 21320.	120–04–05
*	*	*	*	*
		Part II Emission Standards		
*	*	*	*	*
		Article 4 General Process Operations [Rule 4–4]		
5–40–310A.–E	Standard for Nitrogen Oxides	1/1/93	4/28/99 64 FR 22792.	120–04–0408
*	*	*	*	*
		Article 6 Rubber Tire Manufacturing Operations [Rule 4–6]		
*	*	*	*	*
5–40–710	Facility and Control Equipment Maintenance or Malfunction	4/17/95	4/21/00 65 FR 21320.	120–04–0614
5–40–720	Permits	4/17/95	4/21/00 65 FR 21320.	120–04–0615

EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * * * *				
Chapter 80 Permits for Stationary Sources [Part VIII]				
5–80–10/Article 6	New and Modified Stationary Sources.	4/17/95	4/21/00 65 FR 21320.	120–08–01
* * * * * * *				
Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas. [120–08–03]				
5–80–2000	Applicability	1/1/93 .... 4/1/99	4/21/00 65 FR 21320.	.03A (9/21/99, 64 FR 51047).
* * * * * * *				
5–80–2080	Compliance determination and verification by performance testing	1/1/93 .... 4/1/99	4/21/00 65 FR 21320.	.03I (9/21/99, 64 FR 51047).
* * * * * * *				
Chapter 160 General Conformity Rules 1/24/97				
5–160–10	General.	1/1/98	1/7/03 [Insert Federal Register page citation].	Paragraph 5–160–10 is revised.
5–160–20	Terms Defined	1/1/97 .... 1/1/98	1/7/03 [Insert Federal Register page citation].	Terms revised—Emergency. Terms deleted—Administrative Process Act, Confidential information, Consent agreement, Consent order, Emergency special order, Formal hearing, Order, Party, Public hearing, Special order, Variance, Virginia Register Act.
* * * * * * *				
Chapter 170 Regulation for General Administration				
Part I Definitions				
5–170–10.	Use of Terms	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–10–10
5–170–20.	Terms Defined	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–10–20 and 5–160–20 Terms Added—Public hearing, Regulation of the Board. Terms Revised from 4/17/95 version—Consent agreement, Consent order, Emergency special order, Order, Owner, Person, Pollutant, Special Order, Source.
Part II General Provisons				
5–170–30	Applicability	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–20–10
5–170–60.	Availability of Information	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–150 and 5–160–100.
Part V Enforcement				
5–170–120A.–C	Enforcement of Regulations, Permits and Orders	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–30A.–D. and 5–160–60.
5–170–130A	Right of Entry	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–100.

EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
		Part VI Board Actions		
5–170–150	Local Ordinances	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–60.
5–170–160	Conditions on Approvals	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–110.
5–170–170	Considerations for Approval Actions.	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–140.
* * *	*	*	*	* *
	2 VAC 5 Chapter 480 Regulation Governing the Oxygenation of Gasoline			
5–480–10	Definitions	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 1.
* * *	*	*	*	* *
5–480–30	Minimum oxygenate content	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 3.
5–480–40	Nature of oxygenates	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 4.
5–480–50	Record keeping and transfer requirements.	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 5.
5–480–60	Gasoline pump labeling	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 6.
5–480–70	Sampling, testing and oxygen content calculations	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 7.
5–480–80	Compliance and enforcement	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 8.

* * * * *

3. Section 52.2423 is revised by adding paragraph (r) to read as follows:

§ 52.2423 Approval status.

* * * * *

(r) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Chapter 20, Section 9 VAC 5–20–21 (formerly Appendix M), Sections E.4.a.(1), E.4.a.(2), and E.7.a.(1) through E.7.a.(3), of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on June 22, 1999.

[FR Doc. 03–93 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts a new broadcast Equal Employment Opportunity (EEO) rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC.* The Commission also amends and modifies their EEO rules for multichannel video programming distributors (MVPDs). The EEO rules make clear that broadcasters and MVPDs are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and MVPD industries.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley, Media Bureau, (202) 418–1456 or via e-mail at *lpulley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Second Report and Order* (''*2R&O*'') MM 98–204; FCC 02–303, adopted November 7, 2002 and released November 20, 2002. The complete text of this *2R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street,

SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Synopsis of Second Report and Order

I. Introduction

1. In this *2R&O,* we adopt a new broadcast equal employment opportunity (''EEO'') rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC,* 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied,* 122 S.Ct. 920 (2002) (''*Association*''). In addition, we amend our EEO rules and policies applicable to cable operators, and other multichannel video programming distributors (''MVPDs''), to conform them, as much as possible, to the broadcast EEO rule. The new broadcast EEO rule and modified EEO rules for MVPDs, adopted herein, emphasize outreach in recruitment to all qualified job candidates and ban discrimination on the basis of race, color, religion, national origin or gender. We are also issuing a *Third Notice of Proposed Rule Making* (''*3rd NPRM*'') requesting comment as to the applicability of our rules with respect to part-time employees.

II. Background

2. We have administered regulations governing the EEO responsibilities of broadcast licensees since 1969, and of cable television operators since 1972. Our responsibilities in this area were codified with respect to cable television operators in 1984. They were further codified with respect to television broadcast licensees and extended to other MVPDs in 1992. In 1998, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission's EEO program requirements for broadcasters were unconstitutional in *Lutheran Church-Missouri Synod* v. *FCC.*

3. In 1998, we issued a *Notice of Proposed Rule Making* (''*NPRM*''), (63 FR 66104, December 1, 1998), for the purpose of adopting EEO rules for broadcast licensees and MVPDs consistent with the Court's decision in *Lutheran Church.* In 2000, we adopted new EEO program requirements for broadcasters, *Report and Order* (''*R&O*''), (65 FR 7448, February 15, 2000). Substantially the same program requirements were applied to MVPDs. The Commission explained that the new rules required more ''than merely refraining from discrimination.'' They also required broadcasters and MVPDs ''to reach out in recruiting new employees beyond the confines of their circle of business and social contacts to all sectors of their communities [because] * * * repeated hiring without broad outreach may unfairly exclude minority and women job candidates * * * .'' The Commission concluded that nondiscrimination in hiring was not enough when not all potential applicants have had a fair opportunity to apply. ''Outreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process.''

4. The new rule contained two primary requirements—a prohibition on discrimination based on race, color, religion, national origin or gender in hiring, and a requirement that broadcasters reach out in recruiting new employees to ensure that all qualified individuals had an opportunity to apply for and be considered as job candidates. The core of the recruitment requirement was that broadcasters widely disseminate information concerning all job vacancies. The Commission concluded that this basic requirement ''is essential to meaningful outreach.'' The Commission left it largely to broadcasters' discretion concerning how they would fulfill this requirement, so long as their procedures were sufficient to ensure wide dissemination of information about all job openings to the entire community.

5. In addition to the basic requirement of wide dissemination of information concerning job openings, the new rule provided broadcast licensees with two recruitment options. Under ''Option A,'' they were required to undertake two types of supplemental recruitment measures. The first measure required licensees to provide notification of job vacancies to any recruitment organization that requested such notice from the broadcaster. The second supplemental measure under Option A required broadcasters to participate in additional recruitment activities beyond the traditional recruitment that occurs with individual vacancies. These additional measures were to be selected from an open-ended menu of types of activities that included: Job fairs, job banks, scholarship programs, and community events related to employment opportunities in the industry, among others. Broadcasters were permitted to comply with the supplemental requirement by participating in activities other than the listed ones so long as they were designed to disseminate information about employment opportunities to candidates who might otherwise not learn of them. Broadcasters who selected Option A were required to maintain, but not routinely submit to the Commission, records documenting their compliance with the wide dissemination and supplemental recruitment requirements.

6. The Commission also adopted an ''Option B'' for recruitment that permitted licensees to forego the supplemental recruitment measures required under Option A and to design their own outreach program to suit their needs, as long as they could demonstrate that their program is inclusive, i.e., that it widely disseminated job vacancies throughout the local community. The court held, however, that Option B was unconstitutional under the equal protection component of the Due Process Clause of the Fifth Amendment. The Commission filed for hearing and rehearing *en banc,* arguing that Option B was not essential to achieving its goal of ensuring that broadcasters engage in broad outreach in recruiting new employees and that it had made plain its intent that Option B be severable. The court denied rehearing.

7. We issued the *Second Notice of Proposed Rulemaking* (''*2NPRM*''), (67 FR 1704, January 14, 2002) to request public comment on the adoption of new broadcast and MVPD EEO rules consistent with *Association.* An *En Banc* open hearing on the proposed rules was held before the full Commission on June 24, 2002. Having reviewed the suggestions contained in the comments submitted, both in writing and at the *En Banc* hearing, we are adopting new EEO rules that consist primarily of the elements of our former rules that the Court upheld as constitutional in *Association,* with modifications.

III. Summary

8. In this order, we adopt new outreach requirements applicable to broadcast and MVPDs. We are also retaining the nondiscrimination rules applicable to broadcasters and MVPDs.

9. The following is a summary of the three-pronged outreach requirement we are adopting as it relates to broadcasters:

Prong 1: Widely disseminate information concerning each full-time (30 hours or more) job vacancy, except for vacancies filled in exigent circumstances;

Prong 2: Provide notice of each full-time job vacancy to recruitment organizations that have requested such notice; and

Prong 3: Complete two (for broadcast employment units with five to ten full-

time employees or that are located in smaller markets) or four (for employment units with more than ten full-time employees located in larger markets) longer-term recruitment initiatives within a two-year period.

The following is a summary of recordkeeping and reporting requirements:

(a) Collect, but not routinely submit to the Commission: (i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title; (ii) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (iv) documentation necessary to demonstrate performance of the Prong 3 menu options, *e.g.*, job fairs, mentoring programs; (v) the total number of interviewees for each vacancy and the referral source for each interviewee; and (vi) the date each job was filled and the recruitment source that referred the hiree.

(b) Place in the station public file annually a report including the following: (i) A list of all full-time vacancies filled during the preceding year, identified by job title; (ii) recruitment source(s) used to fill those vacancies (including organizations entitled to notification of vacancies pursuant to Prong 2), including the address, contact person, and telephone number of each source; (iii) a list of the recruitment sources that referred the people hired for each full-time vacancy; (iv) data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source; and (v) a list and brief description of Prong 3 menu options implemented during the preceding year.

(c) Submit the station's EEO public file report to the Commission as part of the renewal application and midway through the license term for the Commission's mid-term review for those stations subject to mid-term review (television stations with five or more full-time employees and radio stations with more than ten full-time employees). EEO public file reports for the preceding two year period will be required because broadcasters have two years in which to complete the Prong 3 menu options. Broadcasters must also post the current EEO public file report on their web site, if they have one.

10. The same requirements will apply to MVPDs, except as necessary to comply with different statutory requirements. The Commission is also required to certify that MVPD employment units are in compliance with the EEO requirements on an annual basis. To comply with the Prong 3 requirements, MVPD employment units with six to ten full-time employees and employment units located in smaller markets will be required to undertake one recruitment initiative each year and larger employment units located in larger markets two recruitment initiatives per year. MVPD employment units are not subject to a renewal process at the Commission. Pursuant to section 634(e)(2) of the Communications Act, the Commission is required to conduct a more thorough review of each cable employment unit's EEO compliance every five years. Hence, MVPDs with six or more full-time employees will submit a copy of their most recent EEO public inspection file report to the Commission every five years.

11. The Commission has implemented the MVPD annual reporting requirement under section 634 by FCC Forms 395–A (cable operators) and 395–M (other MVPDs). We will create a new Form 396–C for all MVPDs that will encompass the same information concerning the unit's EEO outreach efforts that was formerly required in FCC Forms 395–A and 395–M. The prior forms were also used to collect data concerning the race/ethnicity and gender of the unit's workforce. The form we are adopting today will not encompass such data because, as indicated below, we will defer action on the collection of workforce data.

12. We are not acting at this time on issues raised in the *2NPRM* concerning the broadcast annual employment report (FCC Form 395–B), which has in the past been used to collect data concerning the workforces of broadcast employment units, including data concerning the race/ethnicity and gender of those workforces. We are similarly not acting on a comparable form for MVPDs. The Office of Management and Budget (''OMB'') adopted new standards for classifying data on race and ethnicity in 1997 that must be incorporated in any such forms beginning in 2003. We must incorporate these new standards in our future forms. In addition, a party has raised issues concerning the collection and processing of the forms. Because the employment reports are filed on September 30 of each year, the next reports would not be due earlier than September 30, 2003.

IV. Discussion

A. Statutory Authority for EEO Program Requirements and Anti-Discrimination Rules

1. EEO Rules Applicable to Multichannel Video Programming Distributors

13. The Commission is explicitly authorized by section 634 of the Communications Act to adopt and enforce the MVPD EEO rules. Indeed, section 634 requires us to enforce EEO rules for MVPDs.

14. Although the Commission is required by section 634 to enforce EEO ruless for the MVPD industry, Congress built into section 634 flexibility by allowing the Commission to implement MVPD EEO rules by rulemaking rather than simply prescribing MVPD EEO requirements by statute; by stating in section 634(d)(2) that the ''rules shall specify the terms under which'' an entity shall take the actions specified in that section; and by providing in section 634(d)(4) that the Commission may amend the MVPD EEO rules ''from time to time to the extent necessary to carry out the provisions of this section.'' Our rulemaking authority, particularly under sections 634(d)(2) and 634(d)(4), permits us to adopt new, race-neutral outreach requirements and to revise the FCC Forms filed by MVPDs to make them consistent with our modified broadcast EEO rules.

15. Section 634(d)(2) obligates the Commission to implement the listed requirements only ''to the extent possible,'' consistent with other conflicting requirements or limitations. The court's decision in *Association* delineates constitutional limitations with which we must reconcile the MVPD EEO rules. We believe that section 634(d)(2) permits the Commission to eliminate those provisions of the MVPD EEO rules that are similar to those struck down by the court in *Association* because it is not ''possible'' for the Commission to enforce a provision that a court has found unconstitutional. We modify the MVPD EEO rules in this *2R&O* to remove provisions similar to those found unconstitutional in *Association.* We also revise the forms filed by MVPDs to conform them with our modified rules.

2. EEO Rules Applicable to Broadcasters

16. In 1992, Congress enacted section 334 of the Communications Act as part of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 192–385, 106 Stat. 1460 (''1992

Cable Act''). Section 334 provides that ''the Commission shall not revise:''

(1) The regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) The forms used by such licensees and permittees to report pertinent employment data to the Commission, 47 U.S.C. 334(a).

The Conference Report accompanying this legislation indicates that section 334 ''codifies the Commission's equal employment opportunity rules, 47 CFR 73.2080'' for television licensees and permittees. Section 334 thus grants the Commission explicit authority to regulate the EEO practices of television broadcasters. Section 334 was enacted as part of section 22 of the 1992 Cable Act, which sets forth Congressional findings that, despite existing FCC EEO rules, there were few women and minorities in managerial positions in the MVPD and broadcast industries; that increased employment of women and minorities in managerial positions will advance the national policy favoring diversity of viewpoints in the electronic media; and that rigorous enforcement of EEO rules is required to effectively deter racial and gender discrimination.

a. Congressional Ratification

17. The Commission has maintained nondiscrimination and EEO program requirements for broadcasters for more than 30 years. In 1968, the Commission concluded that the national policy against discrimination and the fact that broadcasters are licensed under the Communications Act to operate in the public interest required the Commission to consider allegations of employment discrimination in licensing broadcast stations. In 1969, the Commission adopted rules prohibiting broadcast stations from discriminating against any person in employment on the basis of race, color, religion, or national origin, and requiring stations to maintain a program designed to ensure equal opportunity in every aspect of station employment. It reiterated its view that discriminatory employment practices are incompatible with a station's obligation to operate in the public interest, and relied on sections 4(i), 303, 307, 308, 309 and 310 in adopting the new rules. Relying on its authority to license and regulate broadcasters in the public interest, the Commission has revised and extended its rules on numerous occasions since 1969 to, *inter alia,* refine its EEO program requirements, require licensees to file information concerning these programs and other statistical employment information with the Commission, and prohibit discrimination against, and require outreach to, women.

18. Over the last 30 years, the Commission has vigorously enforced its EEO requirements, sanctioning broadcast licensees in numerous cases for failing to comply fully with those requirements. Commission decisions enforcing the EEO requirements have been challenged both by licensees who have been sanctioned for noncompliance and by petitioners who believed that Commission enforcement was not vigorous enough. Indeed, the Court of Appeals for the DC Circuit held more than 20 years ago that the Commission must investigate broadcasters' employment practices and, in assessing the character qualifications of broadcast licensees, consider whether they have engaged in intentional employment discrimination. And the Supreme Court observed in the seminal case addressing the scope of an agency's authority to serve the ''public interest'' that FCC regulation of the employment practices of its licensees ''can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 * * * to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups.''

19. During the three decades that the Commission has administered EEO program requirements and nondiscrimination rules, Congress has repeatedly expressed awareness of the rules and has not only acquiesced in them, but has also referred to them approvingly, confirming our view that the Commission has statutory authority to promulgate these rules. Congress has ratified the Commission's authority to adopt and enforce EEO requirements against broadcasters under its statutory mandate to license and regulate broadcasters in the public interest.

20. In 1984, Congress enacted section 634 of the Communications Act as part of the Cable Communications Policy Act of 1984, Pub. L. 98–549, 98 Stat. 2779 (''1984 Cable Act''). Although the Commission at that time already had rules in place regulating the EEO practices of cable operators as well as broadcasters, section 634 was intended to ''codif[y] and strengthen[] the Commission's existing equal employment opportunity regulations.'' Section 634 granted the Commission broad authority to adopt rules banning employment discrimination by cable operators and requiring cable operators to ''establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices * * *.''

21. The legislative history of section 634 makes it unmistakably clear that Congress believed that the Commission already possessed authority to regulate the EEO practices of mass media entities—broadcast as well as cable. The House Commerce Committee Report on the bill proposing the provisions on which section 634 was based explicitly confirmed the Commission's authority to adopt EEO rules. The House Commerce Committee stated:

(1) *It is well established that the Commission has the authority to regulate employment practices in the communications industry.* Among the Commission's efforts in the equal employment opportunity (EEO) area over the last several years has been the enforcement of employment standards in the cable industry. Section 634 endorses and extends those standards.

(2) Because of the potentially large impact cable programming and other services provided by the cable industry has on the public, the employment practices of the industry have an importance greater than that suggested by the number of its employees. The committee strongly believes that equal employment requirements are particularly important in the mass media area where employment is a critical means of assuring that program service will be responsive to a public consisting of a diverse array of population groups.

22. In addition to the explicit recognition of the Commission's broad and ''well established'' authority to regulate employment practices in the communications industry, the legislative history of section 634 shows that Congress viewed the legislation as codifying, strengthening and building upon the Commission's pre-existing regulatory scheme, which it viewed as well within the Commission's statutory authority.

23. Additional evidence of congressional ratification can be found in the Cable Television Consumer Protection and Competition Act of 1992, which further strengthened the cable EEO requirements, extended those requirements to all MVPDs, and codified the Commission's EEO program and nondiscrimination requirements as applied to broadcast television licensees. Congress once again explicitly acknowledged the existence of the Commission's broadcast and cable EEO requirements and proclaimed that vigorous enforcement of those rules served the public interest. Congress made the following findings in section 22(a) of the 1992 Cable Act:

(1) Despite the existence of regulations governing equal employment opportunity,

females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) Increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

By extending the cable EEO requirements to every entity that provides multiple channels of video programming, such as MMDS operators and DBS licensees, Congress was building upon and closing the gaps in the Commission's regulatory scheme, ensuring that every electronic mass media provider would be subject to EEO regulations enforced by the Commission.

24. The 1992 Cable Act not only strengthened and extended the cable EEO requirements, it also codified the Commission's EEO requirements for broadcast television stations in section 334 of the Act. Section 334 thus explicitly recognizes the existence of the Commission's broadcast EEO rule and requires the Commission to keep its EEO requirements in effect for television broadcasters.

25. Section 22(g) of the 1992 Cable Act required the Commission to report to Congress within two years on ''the effectiveness of [the Commission's] procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority.'' The Commission was required to include in that report ''such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.'' Congress would not have directed the Commission to review the effectiveness of its broadcast and cable EEO policies and regulations then in effect, and recommend whether further legislative action was necessary, had Congress not believed that those policies and regulations were within the Commission's lawful authority. Section 22(g) is further evidence of Congress's affirmative approval of the Commission's authority to adopt equal employment opportunity requirements for broadcasters.

26. There is another compelling reason to find in the current statutory context that Congress has ratified our authority to regulate the EEO practices of broadcasters. The Supreme Court has held on numerous occasions that courts should interpret a statute ''as a symmetrical and coherent regulatory scheme'' and ''fit, if possible, all parts into an harmonious whole.'' In interpreting statutes granting administrative or judicial jurisdiction, the Supreme Court has held specifically that any interpretation of congressional intent that will result in a ''bizarre jurisdictional patchwork'' is to be disfavored absent legislative history or a persuasive functional argument to the contrary. In this case, Congress has explicitly granted the Commission authority to regulate the EEO practices of television broadcasters, cable operators, and all other MVPDs, including such relative newcomers as DBS and MMDS operators. Thus, rejecting the inference of congressional ratification would leave us in the anomalous situation of having jurisdiction to regulate the EEO practices of broadcast television and MVPDs, but not radio broadcasters. There is no indication in the legislative history that this was Congress's intent and none of the broadcasters commenting in this proceeding even attempts to explain why Congress would have intended such a result.

27. The Commission since 1969 has interpreted the Communications Act's grant of authority to license and regulate broadcasters as the public interest, convenience and necessity require as authorizing the Commission to regulate the equal employment practices of broadcasters. Specifically, it has interpreted the statute as granting it authority to prohibit broadcast stations from engaging in employment discrimination and to require them to maintain programs designed to ensure equal opportunity in all aspects of station employment, including recruitment. It is that interpretation of the scope of the Commission's statutory authority under the Communications Act that Congress has ratified over the course of many years.

B. Broadcast and MVPD EEO Rules, Policies, and Forms

1. Anti-Discrimination Provisions

28. In the *2NPRM* we proposed to retain the nondiscrimination provisions of our broadcast and MVPD EEO rules. We noted that the anti-discrimination provision of the broadcast EEO rule, § 73.2080(a), was not challenged in *Association.* Nonetheless, in rejecting the contention that the unlawful Option B could be severed from the EEO rule, the court stated that the ''entire rule'' must be vacated. In order to avoid any confusion arising from the language in the court's decision, we recodify the nondiscrimination requirement. Nondiscrimination is an essential component of every licensee's obligation as a trustee of a valuable public resource. In *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC,* the court stated that ''[a] documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship.'' Finally, we are required by statute to prohibit discrimination by broadcast television licensees and MVPDs.

29. As proposed in the *2NPRM,* we will retain our policy of generally deferring action on individual complaints of employment discrimination against broadcasters and MVPDs pending final action by the Equal Employment Opportunity Commission (''EEOC'') or other government agencies and/or courts established to enforce nondiscrimination laws. We will also retain the discretion to take action, notwithstanding the absence of a final decision by the EEOC or other agency/court, where the facts of a particular case so warrant. As indicated in the *R&O,* our policy generally reflects the fact that Congress intended the EEOC to be primarily responsible for the resolution of discrimination complaints and our separate adjudication of such complaints could result in duplicative or inconsistent decisions.

30. The rule adopted by the *R&O* defined a ''religious broadcaster'' as ''a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity, 47 CFR 73.2080(a).'' In the *R&O,* we clarified that, in the event of a controversy, we would determine on a case-by-case basis whether a licensee was a religious broadcaster by considering such factors as whether it operates on a non-profit basis, whether it has a distinct religious history, whether the entity's articles of incorporation set forth a religious purpose, and whether it carried religious programming.

2. Broadcast EEO Program Requirements

a. Rules and Policies

i. General Considerations

31. Several broadcast commenters have challenged the basis for our adopting any EEO rule for broadcasters. Initially, they seek to characterize our proposals in the *2NPRM* as constituting ''re-regulation.'' In fact, we have never

''de-regulated'' in this area; the court decisions that have invalidated various aspects of our EEO rules have been premised on specific legal defects found in our programs, not on a finding that nondiscrimination rules or outreach requirements are unnecessary.

32. First, our concern is not limited to intentional discrimination. It is not based on Constitutional provisions or on Title VII, but on the public interest standard in the Communications Act. In adopting the Cable TelevisionConsumer Protection and Competition Act of 1992 (''Cable Act''), Congress expressly found in pertinent part: ''Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.'' Congress has made it clear that the public interest standard is sufficiently broad to cover not only intentional discrimination, but also discrimination that may arise as a result of practices and policies that are not intentionally discriminatory. Further, our policy is not limited to imposing sanctions in response to specific past discrimination; it is also intended to deter discrimination in the first instance. Our policy is designed to prevent both intentional and unintentional discriminatory practices in the broadcast and MVPD industries, and to ensure equal opportunity in employment practices, including recruitment.

33. Second, it is not necessary to find that the broadcast industry ''as a whole'' has engaged in discrimination in order to justify regulations to prevent discrimination. We do not suspect that the entire broadcast industry, or even most of it, engages in intentional or unintentional discrimination.

34. Third, although we commend the broadcast associations for the various activities detailed in their comments, they do not demonstrate that an EEO rule is unnecessary.

35. Some broadcasters support the adoption of an EEO rule. Our proposed EEO requirements also are generally supported by the MVPD industry.

36. Discrimination may be easy to hide and difficult to prove. Allegations of discrimination may never be fully litigated because a violator will elect to settle any litigation before it reaches the stage of a final judgment. It is thus impossible to quantify reliably the extent of actual discrimination that exists today.

37. Many of the opponents of our EEO program cite language from the *2R&O* that ''[o]utreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process.'' These parties contend that the broadcast workforce is not homogeneous and that it does not employ insular recruitment and hiring practices to replicate itself. The cited language was intended to explain why outreach in recruitment as well as a ban on discrimination is necessary to deter discrimination. We did not intend to suggest that every broadcast station has a homogeneous workforce. We recognize that in many significant respects the industry has become more diverse over the past decades. We attribute this in large measure to the fact that the industry has been subject to our various EEO requirements since 1969.

38. We accordingly conclude that adoption of new outreach rules for broadcast and MVPDs is supported by the record in this case. The evidence in this proceeding demonstrates an ongoing need to deter discrimination and ensure equal employment opportunity in the broadcasting and MVPD industries. Moreover, Congress has made clear its intention that we should enact EEO rules for the broadcast and MVPD industries.

39. Finally, as noted, our primary goal in adopting EEO program requirements is to ensure broad outreach in recruitment for broadcast and MVPD employment vacancies. We seek to do so in a manner that affords some flexibility to affected industries. The regulations we are adopting today provide sufficient flexibility. Entities will have broad discretion as to the type of recruitment sources they will use, the number of recruitment sources they will use, and the Prong 3 menu options they will implement. We are also providing that entities in smaller markets may implement fewer menu options than those in larger markets.

ii. *EEO Program and Related Provisions*

40. In the *2NPRM,* we proposed a three-prong EEO program requirement designed to ensure equal opportunity to all potential applicants, including all races and both genders, without infringing on the rights of any group. The rules were further designed to be flexible enough to avoid imposing an undue burden and to apply reasonably and effectively to broadcasters and MVPDs in differing circumstances. Based on our review of the comments, reply comments and other presentations filed in this proceeding, we adopt the proposed program, with some modifications.

41. *Outreach Prong 1—Recruitment for All Full-time Vacancies.* We will adopt the requirement that broadcasters recruit for all full-time vacancies, except in exigent circumstances. Recruitment for substantially all vacancies using sources designed to achieve broad outreach is necessary to ensure that all segments of the population have an equal opportunity to compete for broadcast (and MVPD) employment and that no segment is subjected to intentional or unintentional discrimination.

42. The effectiveness of our requirements in the past does not justify eliminating them now. Nor can we justify such a conclusion based on recent outreach efforts by the broadcast industry commendable, given that this has been an area under high scrutiny for some time. We can draw no inference from these facts; therefore, regarding the likely behavior of licensees in the absence of any current on proposed EEO program. Second, our requirements provide sufficient flexibility to design recruitment programs appropriate for different positions and circumstances.

43. In the *2NPRM,* we recognized that there might be occasional exigent circumstances in which recruitment may not be feasible. We cited as an example the need to replace immediately an employee who departs without notice and whose duties cannot be fulfilled, even briefly, by other station employees. We stated in the *R&O* that we could not anticipate every circumstance which might justify filling a position without recruitment and indicated that we would rely on the good faith discretion of broadcasters. We nonetheless cautioned that we expected nonrecruited vacancies to be rare relative to the number of vacancies for which recruitment is conducted, because our rule generally requires recruitment for every vacancy. We will incorporate this approach in our new rules.

44. The requirement that broadcasters recruit for every full-time vacancy, unless exigent circumstances exist, will become a component of our rule. Recruitment for only some openings could leave the most desirable positions open to a limited number of potential applicants, possibly excluding significant segments of the community. We will require that broadcasters develop and use for each vacancy a recruitment source or list of recruitment sources (which may be freely modified as circumstances warrant) sufficient to ensure wide dissemination of information about the opening. We will not dictate the number or type of sources that a broadcaster must use. If, however, the source or sources used cannot reasonably be expected,

collectively, to reach the entire community, the broadcaster may be found in noncompliance with our EEO rule. A broadcaster may widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive. Broadcasters may contact the FCC's EEO staff with any questions on this matter. We also clarify that the same recruitment sources need not be used for every hire. We do not require licensees to use recruitment sources that, in their good faith judgment, are unlikely to elicit responses from qualified applicants in light of the demands of a particular job. We do expect them, however, to use whatever recruitment source or sources can reasonably be expected to widely disseminate notice of the vacancy to qualified applicants. Although our rule seeks to achieve broad outreach to the community, this does not preclude the use of regional or national recruitment sources. We will accordingly give consideration to a broadcaster's use of such sources in assessing its EEO record. Whatever sources a licensee uses, however, or whatever a licensee's perception is regarding whether anyone in its community is qualified for a unique job, we are requiring that sources reach qualified potential applicants in the licensee's community. Licensees are not permitted to target any group in the community for exclusion from the recruitment process.

45. With reference to the definition of community for purposes of the broad outreach requirement, we proposed in the *2NPRM* to define ''community'' as encompassing, at a minimum, the county in which a station is licensed or MVPD employees are primarily located, or the Metropolitan Statistical Area (''MSA'') in the case of counties located in an MSA. We will instead define ''community'' for the purpose of the broad outreach requirement in accordance with the approach taken in the *Recon*, (Memorandum Opinion and Order, 65 FR 76948, December 8, 2000). There, we left the definition of ''market'' or ''community'' to the licensee's good faith discretion. We indicated, that in making this determination, a broadcaster should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We will adopt the same policy for purposes of our new rule. (Although we are according discretion regarding the definition of ''community,'' we expect broadcasters to be able to provide a reasonable explanation for their determinations should it become pertinent. We would be concerned if the circumstances suggested that a broadcaster is unreasonably defining its community in a manner that excludes certain areas or populations that it clearly does serve.)

46. We require only that EEO recruitment sources be reasonably calculated to reach the entire community. We do not require that broadcasters demonstrate that any particular segment of the community actually was aware of any vacancy. Nor do we require that recruitment be targeted to a specific segment or that broadcasters prove that they obtained a response from a particular segment. Prong 1 neither requires nor precludes the use of any number or type of sources a broadcaster deems appropriate to achieve broad outreach. Further, we leave the definition of ''community'' to the licensee's good faith discretion. We also recognize that it is difficult for licensees to recruit for vacancies in exigent circumstances. Thus, Prong 1 allows broadcasters flexibility in implementing appropriate recruitment programs for their individual circumstances.

47. Notwithstanding the greater availability of job-related Internet sites, the record does not reflect the extent to which the Internet has become well known as a principal resource for job seekers or the nature of any difficulties that Internet recruitment would create. We anticipated in the *R&O* that we would be able to assess the extent of any such difficulties based on our experience under the rules adopted therein. Because those rules were in effect for only a few months, we do not have the experience necessary to reach definitive conclusions in that respect.

48. With regard to the access of minority and rural populations to the Internet, our concerns arose from a series of reports by the National Telecommunications and Information Administration (''NTIA'') in 1995, 1998 and 1999.

49. Proponents of the use of the Internet as a sole recruitment source cite the improvements reflected in NTIA's 2002 report. Although the NTIA 2002 report shows increases in Internet usage, the report also indicates continuing disparities in usage among different segments of society. Indeed, only about half of all U.S. households had Internet service as of September 2001, and only slightly more than half of individuals used the Internet from any location. We are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source. As we indicated in the *R&O*, we will continue to monitor the viability of the Internet as a recruitment source and will consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy.

50. As indicated in the *R&O,* we expect broadcasters to allow a reasonable time after recruitment is initiated for applications to be filed before the position is filled. We recognize that occasionally a shorter time might be necessary because of extraordinary circumstances. We caution that excessive instances of hires being made shortly after the initiation of recruitment could result in a finding of noncompliance if the evidence suggests that the broadcaster is not in good faith allowing adequate time for applicants to respond to its outreach efforts or is not considering their applications. Also, it is not the intention of our rule to prohibit word of mouth recruitment. Our purpose is to ensure that word-of-mouth recruitment practices are not the sole method of recruitment and that all members of the public have an opportunity to compete for available jobs. Broadcasters are free to use non-public recruitment sources and to interview and hire persons referred by such sources, so long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources.

51. We will continue our policy stated in the *R&O* that broadcasters may engage in joint recruitment efforts. Broadcasters may also rely upon the services of outside organizations or individuals to assist it in designing or implementing their recruitment efforts. Each broadcaster (or MVPD) remains individually responsible for compliance with our rule. No broadcaster (or MVPD) is required to use the services of an outside party.

52. We will not require recruitment for internal promotions, nor will we require recruitment for temporary employees. Typically, we view temporary employees as including those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time. If a person is hired full-time to perform a regular station function for an extended period of time (*e.g.*, more than six months), such a hire will be treated as a permanent hire for which recruitment would be required. We recognize that some broadcasters may wish to hire employees initially on

a temporary basis with the possibility of retaining them on a permanent basis if their performance is satisfactory. In such circumstances, if recruitment is done at the time of the temporary hire, any later decision to convert the employee's status to full-time in the same, or essentially the same, job may be treated as a promotion. If an employee is hired as a temporary employee without recruitment, recruitment should occur if the employee is later considered for a permanent position. We caution that excessive instances of temporary hires being converted to permanent hires, without a meaningful opportunity for recruited applicants to compete, could result in a finding of noncompliance. (If an employee is hired with the expectation that successful completion of an initial probation will result in an eventual elevation to permanent status, we would not regard that as a temporary hire and would expect regular recruitment for that position.)

53. We will continue to define ''full-time employee'' as a permanent employee whose regular work schedule is thirty hours or more per week. In the *Recon*, we indicated that, as in the case of temporary hires, if a part-time employee is initially hired after broad outreach to all segments of the community, the decision subsequently to convert him or her to full-time in the same, or essentially the same, job may be treated as a promotion. If the broadcaster did not engage in full recruitment at the time of the initial part-time hire it would have to recruit before converting the employee to full-time. Also, as in the case of temporary hires, excessive instances of temporary hires being converted to permanent hires without a meaningful opportunity for recruited applicants to compete could result in a finding of noncompliance. We will apply the same policy under the rule being adopted today.

54. *Outreach Prong 2—Notification to Community Groups.* Under the Option A rules adopted in the *R&O*, we required that broadcasters and MVPDs provide notification of full-time job vacancies to organizations involved in assisting job seekers upon request by such organizations. We will incorporate this requirement into our new rules. This requirement provides a ''safety valve'' to ensure that no segment of the community is inadvertently omitted from recruitment efforts. Organizations or other entities with ties to specific segments of the labor force, such as persons with disabilities, college students, or members of different racial, ethnic, or religious groups could help broaden the reach of recruitment efforts. Organizations that come forward to request vacancy notifications may prove to be very productive referral sources. Further, this approach will enable interested groups to more closely monitor and, if necessary, seek to improve, broadcasters' recruitment efforts. We also expect broadcasters to make reasonable efforts to publicize the notification requirements so that qualifying groups are able to learn of the new procedure. Joint announcements by broadcasters or state broadcasters' associations—such as press releases, newspaper ads, and notices posted on the web site—would satisfy the requirement to publicize. Similarly, broadcasters and MVPDs could satisfy this requirement by individually issuing such announcements, or by providing on-air announcements.

55. We will provide broadcasters discretion to determine the method of providing notice to requesting parties. Such methods may include electronic mail and facsimile which may require fewer personnel and financial resources to fulfill the notification requirement than more traditional methods. For example, a broadcaster may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. We will also allow notifications to be made as part of joint recruitment efforts among broadcasters. However, each broadcaster participating in the joint recruitment efforts remains individually responsible for ensuring that requested notifications relating to its employment unit are made. For example, a state broadcast association may have a job bank that notifies certain sources on behalf of an employment unit when a vacancy becomes available at that employment unit. As long as the state broadcast association notifies all organizations requesting vacancy announcements from that employment unit as part of this process, the employment unit itself need not do so. Therefore, given the flexibility provided by electronic forms of notice and joint recruitment, we expect that the notification requirement will place minimal burdens on broadcasters.

56. An organization that wishes to be notified of vacancies need only notify a broadcaster once in order to be entitled to notification of all future full-time vacancies. If a broadcaster is uncertain as to the status or continuing interest of a particular group, it is free to contact the group to resolve any questions. So long as the group indicates its continued interest in receiving notifications, it is entitled to receive them.

57. The obligation to notify recruitment sources that request notice of vacancies is intended as a supplement to, not a substitute for, broadcasters' core, non-delegable obligation to widely disseminate information concerning all job vacancies. Although recruitment sources will have the right to ask broadcasters for notices of vacancies, they have no obligation to do so. And even if a broadcaster does not receive a single request for notice of vacancy information, it will nevertheless be responsible for ensuring that notice of vacancies is widely disseminated. If it fails to do so, it is not a legitimate excuse that no recruitment organizations requested notices.

58. Prong 2 of the EEO rule requires broadcasters and MVPDs to provide requested notification of full-time job vacancies to organizations involved in assisting job seekers, regardless of whether they are minority or women's organizations.

59. *Outreach Prong 3—Menu Options.* Under the rules adopted by the *R&O*, we required, under Option A, that broadcasters and MVPDs engage in a specified number of activities selected from a menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies. They are designed to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. This approach remains justified and is not unduly burdensome. Various menu options encourage outreach to students and others who would benefit from training, mentoring and scholarships, which can work to enhance the employability of persons seeking jobs in the broadcasting or MVPD industries. These menu methods of outreach also are designed to further broaden outreach efforts to reach segments of the labor force who may be inadvertently omitted from vacancy-specific recruitment. As indicated, under this approach, broadcasters and MVPDs have great flexibility to design the types of recruitment activities best suited to their organizations and communities. In the rule we are adopting today, we will adopt this

requirement while providing additional flexibility by incorporating additional menu options that have been suggested by the parties. We are also reducing the number of menu options that employment units located in smaller markets must perform.

60. The first three specific menu options include participation in at least four job fairs by station personnel who have substantial responsibility for hiring decisions; hosting at least one job fair; or co-sponsoring at least one job fair with an organization in the business and professional community whose membership includes substantial participation of women and minorities. Job fairs are a useful method to reach a broad range of individuals who are interested in employment in the industry. The fourth option is participation in at least four activities sponsored by community groups active in broadcast employment issues, including conventions, career days, workshops and similar activities. The fifth option is the establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment. Such an endeavor would serve the goal of broad outreach by increasing the number of qualified potential employees not only for one broadcaster, but for all broadcasters in the area. The sixth option is participation in general (as opposed to vacancy-specific) outreach efforts by such means as job banks or Internet programs such as those described in the model program developed by NASBA. While such sources may be used as recruitment sources when specific vacancies occur, they can also be useful even when there is no specific vacancy to elicit interest from persons who may later be considered for a specific position. The seventh option is participation in scholarship programs directed to students desiring to pursue a career in broadcasting. The benefit of this outreach is that it attracts students of both genders and all races to careers in broadcasting, ultimately increasing the number of qualified potential employees. The eighth and ninth options are, respectively, the establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions. These options would not be satisfied by ordinary training required for employees to perform their current positions. These options are rather intended to increase employee skills so they can qualify for higher positions.

61. The tenth option is participation in at least four events or programs relating to career opportunities in broadcasting sponsored by educational institutions. Such participation again serves the purpose of increasing the universe of potential employees from which broadcasters attract job applicants. The eleventh option includes sponsorship of at least two events in the community designed to inform the public as to employment opportunities in broadcasting. Such activities can serve to increase public awareness of the opportunities available in broadcasting. The twelfth option would entail listing each upper-level opening in a job bank or newsletter of a media trade group with a broad-based membership, including participation of women and minorities.

62. The thirteenth option will consist of providing assistance to outside non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting. The fourteenth option consists of providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination. The fifteenth option consists of providing training to personnel of outside recruitment organizations that would enable them to better refer job candidates for broadcast positions.

63. The sixteenth option (which was the thirteenth option in our former rule) includes participation in activities other than the fifteen listed options that the licensee has designed to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. This will provide flexibility for worthwhile initiatives that broadcasters may develop but that are not strictly within the scope of the menu options we have specified. The inclusion of this option makes it clear that the list of menu options is an open-ended list intended to guide, rather than limit, broadcasters and MVPDs.

64. In the *R&O,* we required station employment units with more than ten full-time employees to implement four of these options every two years. If that time period is less than two years, the number of menu options may be reduced proportionally to the amount of time available. If a station is required generally to perform four menu options every two years, it would be expected to perform one for each six-month period between the effective date of the rule and the next regular pertinent anniversary. Although we ordinarily do not dictate when a broadcaster must complete its menu options during the regular two-year period, when a broadcaster owns a station or stations for less than the full two-year period, it must complete the prorated number of menu options within the available time period. We will require employment units with five to ten full-time employees as well as employment units in certain smaller markets to perform two of the menu options every two years.

65. We will also permit broadcasters to perform menu options on a joint basis, either with other broadcasters, organizations such as state broadcaster associations, or with a corporate licensee's corporate headquarters. A station seeking credit for a particular menu option performed on a joint basis must have a meaningful involvement in the activity for which credit is sought. It is not sufficient for the station merely to lend its name to an activity or provide money where the activity is otherwise entirely conducted by another entity such as a trade association or the licensee's corporate headquarters. In the *Recon*, we discussed a number of circumstances where credit might be sought for activities engaged in on a joint basis. This discussion remains applicable to joint efforts engaged in pursuant to the rules we are adopting herein.

66. We note that the term ''sponsor'' as used in connection with several options set forth in § 73.2080(c)(2) of the old rule, which we also use in our new rule, was apparently misunderstood by some as referring only to a financial contribution. Our intent for the purpose of these options is that a ''sponsor'' should have a meaningful input into the planning and implementation of a specified event. Simply lending one's name or making a monetary contribution would not be sufficient. Events can be jointly sponsored, so long as each broadcaster seeking credit for sponsoring the event is actively involved in planning and implementing the event.

67. With respect to the maintenance of a scholarship program by a corporate licensee, it is reasonable for a corporate licensee to maintain a scholarship program for those employment units it owns. Any such scholarship program should incorporate involvement by the employment units for which credit will be claimed in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. While each

employment unit need not be involved in every aspect of the program, meaningful involvement in the program is essential to ensure that the employment unit is fulfilling its responsibility under our rule. In addition, the number of employment units seeking credit for a scholarship program should bear a reasonable relationship to the number or type of scholarships awarded by the corporate licensee.

68. Unrelated broadcasters may also jointly maintain a scholarship program, which could be done through a state or local broadcast association, including efforts by such associations to coordinate regional efforts. We believe that the program should incorporate meaningful involvement by each broadcaster seeking credit for the initiative in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. As in the case of corporate scholarship programs, the number or type of scholarships awarded by the joint scholarship program would have to bear a reasonable relationship to the number of employment units seeking credit for it.

69. With respect to mentoring, internships, or training programs administered by a corporate licensee, employment units of the licensee could claim credit for such a program even if not implemented in the community where the employment unit is located, but only so long as personnel from the employment units are participants in the mentoring, internships or training program. Similar questions arose under our former rule as to job fairs hosted by a corporate licensee. We would credit individual employment units with cohosting the job fair only to the extent that personnel from the unit were involved in planning and implementing the job fair. Employment units of the licensee could be credited with attendance at the job fair, but only if personnel from the employment unit with substantial responsibility in making hiring decisions at the unit in fact participated in the job fair. Although the corporate headquarters can assist in the implementation of menu options, personnel from the respective employment units must also be involved in implementation should they seek credit for participation.

70. The EEO rules adopted by the *R&O* under Option A required broadcasters and MVPDs to engage in activities selected from a broad menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These Prong 3 activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies in order to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. Prong 3 activities are intended as a method to reach segments of the community who might otherwise be omitted, possibly inadvertently, from vacancy-specific recruitment efforts.

71. *Outreach Requirements of Religious Broadcasters.* In the *NPRM,* we proposed to adopt a policy under which religious broadcasters that elected to apply a religious qualification to all of their employees were not required to comply with the broad outreach recruitment requirement or the menu options, but they must make reasonable, good faith efforts to recruit applicants, without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. We adopt that policy. This approach reflects our judgment that the more specific recruitment requirements described above may not be suited to recruitment that is limited to members of a certain religious faith. This requirement will also apply to religious broadcasters that elect to establish a religious qualification for some, but not all, of their positions, with respect to those positions that are subject to the religious qualification. Such religious broadcasters, with respect to other positions not subject to a religious qualification, must comply with prongs one and two. A religious broadcaster that treats five or more its full-time positions as non-religious are required to comply with the prong three menu options because, in regard to those positions, the station is in a comparable position to stations that have five or more full-time employees and none subject to a religious qualification. A religious broadcaster electing to treat none of its positions as subject to a religious qualification would be required to comply with all three prongs. Once an entity establishes its qualifications as a religious broadcaster, it has the discretion to define the religious qualification it seeks to establish. Thus, it may define the qualification generally as encompassing an entire denomination; more specifically as encompassing only persons who share a particular doctrinal belief; or even more specifically as encompassing only persons who are members of a particular church or religious organization. We do not intend to inquire into a religious broadcaster's definition of its religious qualification. All we require is that some effort be made to notify persons who meet the definition established by the religious broadcaster itself as to the availability of employment at the religious broadcaster's station.

72. *Outreach Requirements for International Stations.* In the *Recon*, we indicated that international broadcast stations licensed pursuant to section 73, Subpart F, § 73.701, *et seq.*, would be subject to our EEO requirements, except for the public file requirement, given that such stations are not required to have a public file. We are continuing this requirement in the new rules.

73. *Recordkeeping.* We will require broadcasters to retain documentation concerning their compliance with the three recruitment prongs, as proposed in the *2NPRM.* This documentation must be retained by the station, but will not be routinely submitted to the Commission. The data must be provided to the Commission upon request in the event of an investigation or audit. The documentation includes: (1) Listings of all full-time job vacancies filled by the station employment unit, identified by job title; (2) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (3) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (4) documentation necessary to demonstrate performance of the Prong 3 menu options, including sufficient information to disclose fully the nature of the initiative and the scope of the station's participation, including the station personnel involved. This documentation will allow us to verify compliance with our rules; we find no reason to believe that this minimal record retention requirement imposes an unreasonable burden on broadcasters or MVPDs.

74. We also sought comments in the *2NPRM* as to whether we should require the retention of documentation concerning the recruitment sources that referred hires and interviewees.

75. Our rule focuses on the process of recruitment, not the results thereof. It is nonetheless necessary to have some means of assessing whether the process has been conducted in good faith and whether the process is working as intended. We expect that broadcasters and MVPDs will analyze the results of their recruitment efforts to ensure that they actually achieve broad outreach. This requires knowledge of what recruitment sources have been productive in generating qualified applicants. Records of the recruitment sources of the most qualified applicants—those interviewed or hired—will be helpful in this regard. We will accordingly require that broadcasters and MVPDs maintain records reflecting the referral sources of interviewees and hires.

76. We will not require the retention of records of the recruitment sources of applicants. Data concerning the recruitment sources of interviewees and hires is sufficient for the limited purpose of determining whether the program is being conducted in good faith and working as intended. Further, although it is minimally burdensome to ascertain the recruitment sources of interviewees and hires because they are readily available to provide this information if it is not reflected in the jobseeker's application, tracking the recruitment source of all applicants may require additional efforts to collect this information. This may place an inordinate burden on broadcasters and MVPDs, particularly in light of the fact that information concerning applicants in the aggregate does not necessarily reflect sources of qualified applicants.

77. We will require that all records documenting outreach efforts be retained until the grant of the renewal application covering the license term during which the hire or activity occurs, except that, if a licensee acquired a station pursuant to an assignment or transfer that required Commission approval of FCC Form 314 or 315 during the license term, it need not retain records pertaining to the outreach efforts of a prior licensee. In order to minimize any burden associated with this requirement, records may be maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format. Absent a showing of extraordinary circumstances, we will not credit claimed activities that cannot be supported by records.

78. In the case of religious broadcasters that apply a religious qualification to some or all of their hires, they need only retain, in the case of hires subject to the qualification, documentation as to the full-time vacancies filled, the recruitment sources used, the date each vacancy was filled, and the recruitment sources of the hires. This information is pertinent to monitoring whether the broadcaster made reasonable, good faith efforts to recruit among persons who meet the applicable religious qualification.

79. *Public File.* We will adopt the requirement that broadcasters place in their public file annually, on the anniversary of the date they are due to file their renewal applications, an EEO public file report containing the following information: (1) A list of all full-time vacancies filled by the station employment unit during the preceding year, identified by job title; (2) for each such vacancy, the recruitment source(s) used to fill the specific vacancy (including organizations entitled to notification of vacancies pursuant to Prong 2, which should be separately identified), including the address, contact person, and telephone number of each source; (3) a list of the recruitment sources that referred the people hired for each full-time vacancy; data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and, for each recruitment source used in connection with any such vacancies, the total number of interviewees referred by that source; and (4) a list and brief description of Prong 3 menu options implemented during the preceding year. Religious broadcasters with hires subject to a religious qualification need include, for full-time vacancies subject to the qualification, only the information called for in (1) and (2) above, along with information concerning the recruitment sources that referred the persons hired.

80. Some broadcasters object that documentation concerning a station's EEO efforts should not be made available to the public. To the contrary, as we indicated in the *R&O,* the public has an important role in monitoring broadcaster compliance with our EEO rule. The EEO public file report is designed to facilitate meaningful public input. We recognize broadcaster concerns that the availability of this information could trigger unwarranted, even frivolous, filings. The possibility of abuses by some does not warrant depriving the public of its right to participate in the process of monitoring and enforcing our EEO rule, which directly impacts them.

81. We will also require that broadcasters post the EEO public file report on their web site, if they have one. (Although the reports must be retained in the public file until final action has been taken on the station's next renewal application, all reports need not be maintained on the station's Web site. The requirement to post a station's EEO public file report on its Web site extends only to the current report. Also, we require only that the information contained in the EEO public file report be placed on the Web site. A scanned copy of the actual paper report contained in the public file need not be placed on the Web site; any legible format may be used.) The purpose of this requirement is to facilitate access by persons within the service area. We do not believe that our requirement to place EEO public file report information on a station's Web site is unreasonable or overly burdensome.

82. Broadcasters are free to use any format in their public file report to avoid unnecessary duplication as long as the report clearly provides the information requested. For instance, if a broadcaster used the same recruitment sources for all its vacancies, it may maintain a single list of those sources, indicating that they were used for all vacancies. If a broadcaster used different sources for different vacancies, it may maintain a master list of all its sources and use a cross-reference system to show which sources were used for which vacancies.

83. The EEO public file report need not be routinely submitted to the Commission, except in two instances. The EEO public file reports covering the two-year period preceding the filing of a renewal application must be submitted with that application as an attachment to Form 396, and will be one basis for our review of the broadcaster's compliance at renewal time. Also, for stations subject to mid-term reviews, the EEO public file reports for the two-year period preceding the mid-term review must be filed with the Commission and will be one basis for mid-term reviews. Renewal and mid-term review procedures are discussed in greater detail.

84. Because the filing dates for the EEO public file reports are tied to the date of filing of renewal applications, the due dates will apply to a given station regardless of when the licensee acquired the station. Consequently, if there is a substantial change of ownership requiring approval pursuant to FCC Form 314 or FCC Form 315 during the one-year period covered by an EEO public file report, the new licensee must place the report in the public file by the due date. The information contained in the report would encompass only EEO efforts undertaken by the new licensee.

85. The EEO public file report will be filed for station employment units, rather than only for individual stations. A ''station employment unit'' will be defined, as it was under our former rule, as including a station or group of commonly owned stations in the same market that shared at least one employee. We will leave the definition of the ''market'' to each licensee's good faith discretion. In making this determination a licensee should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We expect a licensee to be able to provide a reasonable explanation for its determination should it become an issue. Finally, stations in the same market should be considered part of the same employment unit even if the licenses are held by different business entities that are commonly owned or controlled. We would view licensees as commonly owned for the purpose of the EEO rule if 50 percent or more of the voting control of the licensees is held by the same persons or entities.

86. If a station is subject to a time brokerage agreement, the licensee's EEO public file report should include data concerning only its own recruitment efforts for full-time positions and not the efforts of the broker. If a licensee is a broker of another station or stations in the same market as an employment unit including a station or stations of which it is the licensee, the licensee's EEO public file report should include data concerning its EEO efforts at both the owned and brokered stations. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include information concerning its EEO efforts at the brokered station in the EEO public file report for its own station that is geographically closest to the brokered station. The same policy will apply to EEO forms filed at mid-term (where applicable) (Form 397) and at renewal (Form 396), discussed. Non-licensee brokers are not required to file EEO public file reports because they are not licensees. If a broker is controlled directly or indirectly by a licensee or licensees, it should be considered a licensee-broker.

87. We recognize that there may be some employment units that are located in markets that include stations licensed to communities in more than one state that are in different renewal groups. As a result, the date of the last renewal application filing differs for some stations in the same employment unit, so that there could arguably be two dates governing the placing of the EEO public file report in the public file because that date is based on the anniversary of the filing of the last renewal application. The same problem arises with respect to the filing of mid-term reports (FCC Form 397), discussed. It is not our intent that employment units comply with these requirements more than once merely because they include stations in more than one renewal group. We will generally expect employment units in this situation to proceed in accordance with the schedule for only one of the renewal groups included in their unit. There may be rare instances involving television stations when it will be necessary for us to request a supplemental filing in order to comply with the statutory requirement that we conduct mid-term reviews of television licensees' EEO compliance.

88. An employment unit consisting of stations in more than one renewal group may select the renewal group that it will use for the purpose of determining the filing dates for its annual public file reports and its mid-term report, where applicable, in accordance with the following criteria. If the employment unit includes a television station, the dates for the television station should ordinarily govern, in order to accommodate the statutory requirement for mid-term review of television licensees' EEO compliance. Apart from this situation, the renewal group that will determine the employment unit's EEO filing schedule should be selected so as to minimize the time between the date for placing the EEO public file report in the public file and the date for the filing of renewal applications for stations located in renewal groups that have different renewal filing dates than the renewal group used to determine the employment unit's EEO filing schedule.

89. There may also be circumstances in which an employment unit consists of television and radio stations that are part of the same renewal group, except that the renewal schedule for radio is one year earlier than the schedule for television. In these circumstances, the filing schedule for television stations should be used for purposes of filing the mid-term report (FCC Form 397) for the employment unit, if it is subject to the requirement to file a mid-term report. This report would cover all stations in the employment unit. Thus, there would be no need to file a separate mid-term report for the radio station(s). Because the date for placing the annual public file report in the public file is the same for both radio and television, the most recent public file report should be submitted with the renewal applications for both television and radio stations in the employment unit.

90. Renewal applications must still be filed separately for each station in accordance with the regular schedule for the station's renewal group. FCC Form 396, the EEO form submitted with the renewal application, discussed below, requires that the licensee attach the EEO public file report that is ordinarily placed in the public file simultaneously with the filing of the renewal application, as well as the report for the prior year. When a station is part of an employment unit that is using the EEO filing schedule for another renewal group, the station should submit with its FCC Form 396 the most recent EEO public file report prepared for the employment unit. If the licensee feels that the most recent EEO public file report does not accurately reflect the employment unit's EEO program as of the date of the filing of the renewal application, it should disclose any pertinent facts as part of the narrative statement also required by the FCC Form 396.

91. Low power television (LPTV) stations are subject to the broadcast EEO rule by virtue of a cross-reference contained in § 74.780 of the Commission's Rules. (Licensees of low power FM (LPFM) stations are subject to the Commission's prohibition against employment discrimination. *See* 47 CFR 73.881. LPFM licensees are not required to comply with any EEO program requirements. As we stated in the LPFM *R&O,* ''[b]ecause we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our rulemaking proceeding.'') LPTV stations are not required to maintain a public file. As indicated in the *Recon,* we will not expect them to prepare an EEO public file report, although LPTV stations with five or more full-time employees must comply with the recordkeeping requirements. Class A television stations are subject to the requirement to maintain a public file and are fully subject to the EEO rule, including the requirement to prepare an EEO public file report.

92. *Enforcement.* We will adopt the enforcement process proposed in the *2NPRM,* which is similar to that adopted in the *R&O,* except that we are eliminating the requirement that broadcasters certify compliance with the EEO rule in the second and sixth years of their license term. We will conduct

mid-term review of television stations with five or more full-time employees and radio stations with more than ten full-time employees, using FCC Form 397. We treat television stations differently from radio stations because of the requirements of section 334 of the Communications Act which does not permit us to exempt television stations with five to ten full-time employees from the mid-term requirement.

93. We will also monitor EEO compliance through random audits and targeted investigations resulting from information received as to possible violations. Each year we will select for audit approximately five percent of all licensees in the radio and television services, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Initially, the inquiry may request the contents of the station's public file. Further inquiry or inquiries may be conducted requesting additional documentation of recruitment efforts that is not in the public file. Based on the circumstances of the case, the inquiry could potentially include, but not be limited to, (1) A request for data covering any period of the license term; and (2) interviews of witnesses, including any complainant and present or former station employees.

94. Licensees will be subject to a variety of sanctions and remedies for EEO rule violations or deficiencies. Some examples of violations or deficiencies might include: engaging in employment discrimination in hiring or promotions; failure to file a mid-term review when due; failure to file an EEO public file report when due; failure to file Form 396 when due; misrepresentation of outreach efforts or other information; non-responsiveness or evasion in responding to a written Commission inquiry; failure to recruit for all vacancies absent exigent circumstances; failure to widely disseminate information concerning vacancies for full-time positions; failure to analyze routinely the adequacy of the various program elements in achieving broad outreach to all segments of the community; failure to undertake the required Prong 3 menu options; and failure to notify organizations that request vacancy notices. Also, it may constitute a violation of the EEO rule if, based on all of the evidence, we determine that a licensee has attempted to evade our requirements through token or sham efforts.

95. We take the EEO rules and obligations we establish here very seriously, and fully expect broadcasters and MVPDs to do the same. We remind licensees that it is as true today as it was 20 years ago that a ''documented pattern of intentional discrimination would put seriously into question a licensee's character qualification to remain a licensee.'' We intend to carefully monitor compliance with our EEO rules. Sanctions and remedies that may be issued by the Commission for deficiencies in licensees' EEO compliance include admonishments, reporting conditions, forfeitures, short term renewal of license, or designation for hearing for possible revocation of license or denial of renewal. The appropriate sanction or remedy will be determined on a case-by-case basis. Sanctions will be greater in cases involving recidivism, continuous EEO non-compliance, or intentional discrimination. In particular, if sufficiently egregious violations are found, we will not hesitate to designate for hearing.

96. We will also be taking steps to ensure that broadcasters, MVPDs, and the public are aware of and able to comply with the EEO rules and policies. First, we will continue to maintain an EEO page on the Commission's Web site. In addition, our Consumer & Governmental Affairs Bureau (CGB) will provide information to the public on the new rules adopted by the Commission. CGB will make a factsheet on the rules available to the public through our consumer centers and our Web site. Commission staff will continue to participate in conferences held throughout the country that deal with broadcast and MVPD EEO issues. Finally, as always, our EEO staff is available to answer more specific questions and provide informal guidance regarding the rules. We encourage the industry and the public to take advantage of these resources.

97. *Forms Relating to EEO Compliance.* We readopt the forms adopted in the *R&O,* incorporating the changes discussed above. Primarily, we eliminate the portion of the forms that provided for an election between Option A and Option B because our present rule does not provide for an election. We also will not reissue the Initial Election Statement, which required a licensee to choose between Option A and Option B. We are addressing here only forms relating to our EEO outreach requirements. As indicated, FCC Form 395–B, the Annual Employment Report, which is being deferred, is unrelated to the implementation and enforcement of our EEO program.

98. We readopt, with modifications, FCC Form 396, which is filed by broadcasters as part of their renewal applications. We will delete the Option A/Option B election. The form as adopted by the *R&O* also required the broadcaster to certify that it complied with the EEO rule during the two-year period preceding the filing of the report; to attach a copy of its EEO public file for the preceding year; and to provide a narrative statement demonstrating how the station achieved broad outreach during the preceding two years. The licensee must still certify to the accuracy of the forms it submits to the Commission; it just need not draw a legal conclusion as to whether the facts it submits demonstrate compliance with our rules. We will modify the form to eliminate the certification requirement. We will require the submission of the EEO public file report due at the time of the filing of the Form 396 along with the form filed one year before that. This is because we allow two years for the performance of the Prong 3 menu options. We recognize that in some instances a station may have been sold during the prior two years. In that case, the licensee at the time of renewal need only submit EEO public file reports relating to its own operation of the station.

99. The version of Form 396 adopted by the *R&O* included the following question: ''Have any complaints been filed before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?'' In the *2NPRM,* we stated that the form required the reporting of ''pending'' discrimination complaints. We did not clarify the period of time to which the word ''pending'' referred, *e.g.*, pending at any time during the most recent license term or pending at the time a renewal application is filed. We will require the reporting of all complaints filed during the most recent license term, consistent with our past practice. This will avoid unnecessary litigation and involves little additional burden. Form 396 requests information concerning the disposition or current status of the complaint, and the Commission will consider complaints only to the extent they are deemed relevant.

100. FCC Form 396–A is to be used for applications for the construction of a new broadcast station or for the sale of an existing broadcast station. We will readopt this form but delete references to the Option A/Option B election.

101. We adopted in the *R&O* FCC Form 397, ''Broadcast Statement of Compliance,'' which was to be submitted in the second, fourth, and sixth years of the license term for the

purpose of certifying whether the licensee's station employment unit complied with the EEO rule during the preceding two years. In the *2NPRM,* we proposed to use the Form 397 only for the purpose of filing mid-term reviews, renaming it the ''Broadcast Mid-term Report.'' We will adopt this proposal. Form 397 will be filed by licensees subject to mid-term review. We will modify Form 397 to eliminate the reference to an election. In addition, consistent with our discussion concerning Form 396, we will eliminate the compliance certification requirement and instead require submission of EEO public file reports for the two years preceding the filing (unless the earlier report does not pertain to the current licensee because of a sale). Two groups of television stations would be required by our new rules to file mid-term reports in 2003: New Jersey and New York filings would be due by February 1, 2003, and Delaware and Pennsylvania filings would be due by April 1, 2003. Because of the extremely short time between the anticipated effective date of the rules and the filing dates, we will not require stations in these groups to file mid-term reports in 2003.

102. *Provisions for Small Stations and Small Markets.* The rule adopted by the *R&O* exempted from the outreach provisions (but not the nondiscrimination provisions) station employment units that had fewer than five full-time (30 hours per week or more) employees. As noted, a ''station employment unit'' referred to a station or group of commonly owned stations in the same market that shared at least one employee. We will include this exemption in our new rule. We also provided in the *R&O* that station employment units with five to ten full-time employees would be required to perform only two, rather than four, Prong 3 menu options every two years. We will incorporate this requirement in our new rule. In addition, we will extend it to certain small market stations. We further provided in the *R&O* that radio station employment units with five to ten full-time employees would be exempt from the mid-term review requirement. We did not extend this relief to television stations because of the requirements of section 334 of the Communications Act. We will include this exemption for radio in our new rule.

103. In the *2NPRM,* we asked whether we should expand the exemption for small stations to include employment units with ten or fewer employees. We also asked whether we should modify the requirement that stations with more than 10 full-time employees complete four menu options every two years. Smaller stations with five to 10 or fewer full-time employees are required to complete two menu options every two years. We further asked whether we should treat all stations with five or more full-time employees that are located in smaller markets like smaller stations. Having reviewed the record, we find no basis for increasing the pertinent exemptions, except that we find some modification warranted with respect to the menu option requirements applicable to stations in smaller markets.

104. With one exception, we find no basis in the record to provide additional exemptions from our rule beyond those referenced. First, we reject as unsupported in the record any suggestion that the rule we adopt today imposes unreasonable burdens on small broadcasters. As a general matter, the rule imposes minimal burdens. In addition, small broadcasters are permitted to perform fewer menu options, and most likely will have fewer hires, resulting in fewer records to keep and fewer job vacancies requiring recruitment under the rule. Further, as we found in the *R&O,* small stations provide entry-level opportunities in the broadcast industries and make up approximately ⅓ of the broadcast industry. If we were to exempt such a large number of stations from the EEO rule—stations that may provide entry level opportunities for people new to broadcasting—we would undermine the central purpose of our EEO rule. We decline to do so.

105. We find that it would be appropriate, to modify our Prong 3 menu option requirement for stations in smaller markets. We recognize that smaller markets may not have the resources in the community to support some of the activities contemplated in Prong 3. We did not address this problem in the *R&O* because small market stations that found the menu option requirement burdensome could elect to proceed under Option B. That alternative will not be available under our new rule. We will accordingly provide that small market stations will be required to perform only two, rather than four, menu options during a two year period.

106. We will define the scope of this exemption as extending to any station employment unit consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by OMB, or is located in a metropolitan area that has a population of fewer than 250,000 persons. This will operate to reduce requirements for stations in most markets below the 100 largest markets using definitional criteria that are readily ascertainable from government sources. (The most recent OMB definition of metropolitan areas is contained in OMB Bulletin No. 99–04 (June 30, 1999). *See http://www.whitehouse.gov/omb/inforeg/msa-bull99-04.html.* Metropolitan areas with a population of fewer than 250,000 are defined as Level C and D MSAs or primary MSAs (PMSAs). OMB Bulletin No. 99–04 may be used initially to define areas subject to this provision. OMB has adopted new metropolitan area standards and will announce definitions of areas based on the new standards and Census 2000 data in 2003. *Standards for Defining Metropolitan and Micropolitan Statistical Areas,* (65 FR 82228, December 27, 2000).)

107. In the *Recon,* we adopted a policy pursuant to which an owner who has a controlling interest (50 percent or greater voting control) in a licensee would not be considered a station employee for purposes of the EEO rule, even if he or she worked at the station. We concluded that such an owner's employment at the station would be more an incident of ownership rather than a normal employment relationship because the owner could not be in any normal sense hired or fired. We declined to extend this policy to lesser ownership interests because the circumstances pertaining to their employment might vary widely and we could not assume that the employment was primarily an incident of ownership. Fletcher, Heald & Hildreth, P.L.C. (''FHH''), on behalf of its clients, filed a petition for reconsideration, urging that owners with 20 percent or greater interests should not be treated as ''employees'' for purposes of the EEO rule. We will not consider owners holding a 20 percent or greater voting interest in a licensee as station ''employees'' for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership. Absent that circumstance, it is reasonable to believe that a 20 percent or greater owner's employment position is an incident of ownership. Someone who owns a 20 percent interest in a licensee company is not truly an

employee of the licensee, holding a position that would be subject to recruitment, and thus should be permitted to work at the station without first requiring outside recruitment. FHH suggests that we should, as a safeguard, require that the owners have made a capital contribution. We do not find this necessary. Legitimate ownership interests may exist that do not involve a capital contribution. In the event of alleged abuse of this exception, we will consider all relevant factors, including the extent of an asserted owner's capital contribution to determine the legitimacy of a claimed ownership interest.

3. MVPD EEO Program Requirements

a. Rules and Policies

108. We will adopt substantially the same outreach program, recordkeeping and reporting requirements for MVPDs, as we have for broadcasters. The only distinctions will arise in light of the specific requirements imposed by section 634 of the Communications Act. We monitor the EEO programs pursuant to annual reports which have contained employment and program data, as required by statute. We will be creating a new form that will contain only program data. As mentioned, we are deferring consideration of a new form for MVPDs that requires employment data. Because our review of MVPD EEO compliance is an annual review pursuant to section 634, we define the Prong 3 menu options requirement for MVPDs in terms of performing two initiatives annually for those with more than ten full-time employees or one initiative annually for those with six to ten full-time employees. With respect to the definition of ''community'' for the purpose of determining broad outreach, we are leaving the definition of ''community'' for this purpose to the reasonable good faith discretion of the entity concerned. We will apply the same policy to MVPDs. MVPDs should use pertinent criteria, including the location of the system, pertinent market definitions adopted by public agencies or commercial services, and requests for notices of job vacancies from locally-based community groups. They should also consider what areas actually produce job applicants. MVPDs should engage in broad outreach throughout the entire local community from which they can reasonably expect to elicit applicants, whether or not that community is defined by its franchise area.

109. MVPD compliance with the EEO requirements is monitored pursuant to annual reports filed by MVPDs: FCC Form 395–A (for cable operators) and FCC Form 395–M (for other MVPDs). The only substantive modification required by the new rules adopted today is the elimination of the Option A/Option B election. In addition, we will combine these forms. The two forms are virtually identical except for a section in the Form 395–A requiring cable operators to list the communities in which they operate. In view of the similarity of the two forms, we do not find any necessity for having separate forms for cable operators and other MVPDs. Both forms request information concerning the entity's EEO outreach program. In addition, both forms request information as to the gender and racial/ethnic composition of the entity's workforce, analogous to the broadcast Form 395–B. As in the broadcast context, the data concerning the entity's workforce is no longer pertinent to the administration of our EEO outreach requirements. We will adopt at this time a single form, FCC Form 396–C, which will include the portions of Forms 395–A and 395–M relating to EEO outreach, but not the portion eliciting data concerning the entity's workforce, for use by all MVPDs. We will consider the adoption of a new form for eliciting workforce data from MVPDs as part of the future *R&O* in which we will also address the broadcast Form 395–B.

C. Constitutional Issues

110. The court in *Association* upheld Option A of the EEO rule as constitutional because it found that broadcasters were not pressured to recruit minorities and women under Option A. The recruitment outreach provisions we are adopting in this *2R&O and 3rd NPRM* are the same in all material respects as the basic requirements of Option A. In enforcing the EEO rule, the Commission will not pressure employers to favor anyone on the basis of race, ethnicity, or gender. As a race and gender neutral regulation, the EEO rule we are adopting today raises no equal protection concerns.

V. Conclusion

111. In this *2R&O,* we adopt a new broadcast EEO rule and set of policies, and we amend our MVPD EEO rules and policies. We remain committed both to prohibiting discrimination in employment and requiring broad and inclusive outreach in recruitment by broadcasters and cable entities.

VI. Procedural Matters

112. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *2NPRM.* The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *NPRM,* including comments on the IRFA. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (''FRFA'') is contained in Appendix B.

113. *Paperwork Reduction Act of 1995 Analysis.* The actions herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to, and become effective upon, approval by the Office of Management and Budget as prescribed by the Act.

VII. Final Regulatory Flexibility Analysis

114. As required by the RFA, an IRFA was incorporated into the *2NPRM* in this proceeding. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *2NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rule Changes

115. This *2R&O* adopts new equal employment opportunity (EEO) rules and policies for broadcasters and multi-channel video program distributors (MVPDs) consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC,* 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied,* 122 S.Ct. 920 (2002) (*Association*). The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *R&O,* and codified as § 73.2080 of the Commission's rules, 47 CFR 73.2080. The Court found the option invalid because it found that nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

116. One comment was filed specifically in response to the IRFA. The American Cable Association (ACA) proposes the following relief for smaller MVPDs serving fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees: an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395–A (Cable Television Annual Employment Report). ACA states that for many smaller companies, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs. ACA also filed these same comments regarding small MVPDs in response to the *2NPRM*. We note that the *2R&O* considers ACA's concerns and provides relief to small MVPD employment units.

C. Recording, Recordkeeping, and Other Compliance Requirements

117. The purpose of this rulemaking is to replace our prior EEO rule that was found in part to be unconstitutional. Hence, the recording, recordkeeping, and compliance requirements of the new rule will not exceed those under the former rule. We note that the Small Business Administration (SBA) approved our approach for small broadcast stations and small MVPDs under our former rule. Generally, no special skills will be necessary to comply with the requirements.

118. The *2R&O* requires that broadcasters and MVPDs recruit for all full-time job vacancies except in exigent circumstances, that some EEO materials be kept in the public inspection file, and that all broadcasters and MVPDs adhere to the EEO rules' general anti-discrimination provisions.

119. In addition, broadcasters and MVPDs must undertake two additional recruitment measures. The first recruitment measure requires broadcasters and MVPDs to provide notification of full-time job vacancies to any requesting organization if the organization is involved in assisting job seekers. Depending on the size or location of a station's staff, the second recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees in larger markets) or two (for station employment units with five to ten full-time employees or if they are located in a small market) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, Internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; providing assistance to outside non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting; providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination; providing training to personnel of outside organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions; and participation in other activities designed by the station employment unit to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. MVPD units in larger markets with more than ten full-time employees engage in at least two options from the recruitment measures menu every year and MVPD units with six to ten full-time employees or those located in small markets engage in at least one option every year.

120. Also, broadcasters and MVPDs must retain records to demonstrate that they have recruited for all full-time permanent positions. Such recordkeeping includes: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date and recruitment source of each hire, the number of interviewees referred by each recruitment source, and documentation showing proof of participation in menu options. Broadcasters' records must be maintained until grant of the renewal application for the term during which the hiring activity occurred. MVPDs would retain their records for a minimum of seven years. In order to lessen any burdens, records may be maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format.

121. Stations and MVPDs must place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled during the preceding year, recruitment sources used for each vacancy, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, the total number of interviewees referred by each recruitment source, a list of the recruitment source that referred each full-time hiree, and a brief description of the menu option items undertaken during the preceding year. Station units retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities retain their materials for a period of five years.

122. Most broadcasters must submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and MVPDs with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. Broadcasters' submissions cover only the last two years of EEO activity. MVPDs' submissions cover only the last

year of EEO activity. Broadcasters must post their current EEO public file report on their web site, if they have one.

123. Also, broadcasters subject to mid-term review must file Form 397 (Broadcast Mid-Term Report) and place a copy of the Report in the public inspection file. Broadcasters must also place a copy of Form 396 (Broadcast EEO Program Report) and Form 396-A (Broadcast Model EEO Program Report for the construction or sale of a station) in the public inspection file.

124. We also note that we have provided relief to broadcast and MVPD entities located in small markets. While this is not specifically a small entity relief, this action also lessens compliance burdens.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a ''Small Business''

125. The new rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

126. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. Finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

2. Issues in Applying the Definition of a ''Small Business''

127. We could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

128. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

129. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

130. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

131. The rules to be adopted pursuant to this *2R&O* will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

132. There were 1,695 full-service television stations operating as of December 2001. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Thus, under this standard, the majority of firms can be considered small.

133. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. Radio stations which are

separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Under this standard, the great majority of firms can be considered small.

134. The *2R&O* also amends EEO rules applicable to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

135. *Cable Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

136. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. We found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

137. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

138. *LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

139. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable and Other Program Distribution.'' This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

140. An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 ''MVPD'' employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

141. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

142. This *2R&O* sets forth the Commission's new EEO rules and procedures, and considers the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal

regulatory burdens and ease and clarity of administration.

143. The *2NPRM* proposed to exempt small staff stations from specific EEO recordkeeping and reporting requirements as had been the case under our previous EEO rule. Under our former EEO rule, station employment units with fewer than five full-time employees were exempt from the rule's outreach provisions; station employment units with five to ten full-time employees performed only two, rather than four, menu options every two years; and radio station employment units with five to ten full-time employees were exempt from the mid-term review requirement. In addition, MVPD employment units employing six to ten full-time employees performed only one menu option each year as opposed to the two options required otherwise. MVPDs with fewer than six full-time employees were not required to demonstrate compliance with the EEO program requirements. The *2R&O* adopts this same relief. Thus, the EEO rule does not impose unreasonable burdens on small broadcasters or MVPDs.

144. We provide this relief because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. The exception for small businesses provides them with some relief of any recordkeeping and reporting costs. We believe that the relief to small broadcasters and MVPDs balances the importance of deterring discrimination and achieving broad outreach in broadcast and MVPD employment practices against the need to maintain minimal regulatory burdens.

145. The *2NPRM* asked whether the Commission should increase the number of employees below which broadcasters would be exempt from the EEO outreach requirements to include employment units with ten or fewer employees. We also asked whether to increase the threshold for the lesser number of menu options, or permit the lesser number for stations in smaller markets. As noted, we received one comment directly in response to the IRFA. In addition, we received a few general comments that are pertinent. As discussed in the *2R&O,* the National Association of Broadcasters (NAB) supports exempting stations with fewer than ten full-time employees. NAB explains that such stations face unique obstacles in complying with our rule because of a lack of personnel and resources, difficulties in competing with larger stations, and a lack of access to resources necessary to implement menu options. NAB also contends that stations in smaller markets face difficulties similar to those facing stations with fewer that ten full-time employees. The Association of Public Television Stations supports an exemption from the EEO rule for stations with ten or fewer employees because of the funding problems of small public television stations, especially those outside of top 100 markets, and difficulties experienced in attracting and retaining minority employees. The Local Television Group (LTVG) asks the Commission to exempt stations with fewer than 100 employees, in order to parallel Equal Employment Opportunity Commission rules. Minority Media and Telecommunications Council (MMTC), the National Organization for Women (NOW), American Women in Radio and Television (AWRT), the National Association for the Advancement of Colored People (NAACP), and the Lawyers' Committee for Civil Rights Under Law oppose an increase in the exemptions, citing primarily the opportunity for entry into the industry provided by small stations.

146. The ACA asks for an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395–A (Cable Television Annual Employment Report) for cable systems with fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees. ACA explains that the Commission previously provided relief to systems with fewer than 15,000 subscribers in the context of rate regulation, and that compliance with EEO outreach and recordkeeping imposes substantial administrative burdens for smaller cable companies.

147. Fletcher Heald & Hildreth, P.L.C. (FH&H) requests that the Commission adopt a policy that when an owner has a controlling interest (20% or greater voting control) in a licensee, he or she would not be considered a station employee for purposes of the EEO rule, even if he or she in fact worked at the station.

148. We recognize that smaller markets may not have the resources in the community to support many of the required menu options. Accordingly, the EEO rule adopted in the *2R&O* provides that small market systems will be permitted to perform only two, rather than four, menu options during a two-year period.

149. The EEO rule also will not consider owners holding a 20% or greater voting interest in a licensee as station employees for EEO purposes. This policy could assist small operators by reducing the number of full-time employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.

150. We find no basis in the record to provide any additional exemptions from our rule. Generalized claims as to the alleged burdens by commenters are unsupported by evidence. The rule we are adopting today does not impose unreasonable burdens on small entities. Nor does the rule impose hardships comparable to those involved in rate regulation. Further, as we found in the *R&O,* small entities provide much needed entry-level employment opportunities in the industry.

151. With respect to streamlining reporting/recordkeeping requirements, we will replace Form 395–A with a new form, the FCC Form 396–C. MVPD compliance with the EEO rule's requirements is monitored pursuant to annual reports filed by MVPDs which must be placed in an entity's public file. The Form 396–C requires information concerning the entity's EEO outreach program and not its workforce. We will consider the adoption of a new form eliciting workforce data in a future *R&O.*

152. In order to lessen any burdens, the *2R&O* does not require the retention of records of the recruitment sources of applicants as this may require additional efforts to contact applicants who did not provide the information in the application. Also, records may be conveniently maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format.

Report to Congress

153. The Commission will send a copy of the *2R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *2R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *2R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clause

154. Pursuant to the authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554, *2R&O* is adopted, and part 73 and part 76 of the Commission's rules are amended. It is our intention in adopting these rule

changes that, if any provision of the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of the rules not deemed unlawful and the application of such rules to other persons or circumstances shall remain in effect to the fullest extent permitted by law.

155. The late-filed comments and reply comments in this proceeding are considered as part of the record in this proceeding.

156. Pursuant to the Congressional Review Act, the new rules and amendments will become effective either March 10, 2003, or upon receipt by Congress of a report in compliance with the Congressional Review Act, 5 U.S.C. 801, whichever is later, and the information collection contained in these rules will become effective March 10, 2003, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. We will not require television broadcast licensees to file EEO mid-term reports in 2003.

157. FCC Forms 395A, 395B and 395M, and §§ 73.3612 of the Commission's rules, 47 CFR 73.3612 (Annual Employment Report) and § 76.1802 of the Commission's rules, 47 CFR 76.1802 (Equal Employment Opportunity) will remain suspended pending further action on workforce data collection issues.

158. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *2R&O,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

159. MM Docket No. 98–204 will remain open for the limited purpose of considering the issues raised in the *3rd NPRM,* and to facilitate any additional proceedings upon further order of the Commission.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.2080 is revised to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees and is not located in a smaller market) or two (if it has five to ten full-time employees and/or is located entirely in a smaller market) of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.

(d) *Small Station Exemption.* The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full-time employees.

(e) *Definitions.* For the purposes of this rule:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(3) A smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 396, Forms 397, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 396, Forms 397 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Forms 396, Forms 397, and EEO public file reports. To determine compliance with the EEO rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

(g) *Sanctions and Remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this rule.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 560, 561, 571, 572, 573.

4. Section 76.75 is amending by revising the section heading and paragraphs (b), (f), (g), (h), (i), and (j); and removing paragraph (k), to read as follows:

§ 76.75 Specific EEO program requirements.

* * * * *

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a multichannel video programming distributor to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in multichannel video programming distributor employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for multichannel video programming distributor employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in multichannel video programming communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in multichannel video programming communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

* * * * *

(f) A multichannel video programming distributor shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to ensure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(i) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), and (f) of this section shall not apply to multichannel video programming distributor employment units that have fewer than six full-time employees.

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

5. Section 76.77 is revised to read as follows:

§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396–C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular EEO program annual reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of

employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(e) *Public complaints.* The public may file complaints based on EEO program annual reports, supplemental investigation information, or the contents of a unit's public file.

(f) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

6. Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 396–C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

BILLING CODE 6712–01–P

Appendix—Forms

Note: The following appendix will not appear in the Code of Federal Regulations.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-0120

**BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
MODEL PROGRAM REPORT**

Legal Name of the Applicant		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

☐ Application for Construction Permit for New Station ☐ Application for Assignment of License

☐ Application for Transfer of Control

a. Service Type: ☐ AM ☐ FM ☐ TV ☐ Other (specify)

b. Community of License: City | State

INSTRUCTIONS

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to ensure equal employment opportunity. This is submitted to the Commission as the Model EEO Program. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

NOTE: Check appropriate box, sign the certification below and return to FCC:

Station employment unit will employ fewer than 5 full-time employees; therefore no written program is being submitted.

Station employment unit will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed	Name of Respondent
Title	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC 396-A
October 2002

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees, and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified persons.

II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

V. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. RESPONSIBILITY FOR IMPLEMENTATION

Name/Title

will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

To ensure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

☐ The station's employment application forms will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

☐ Other (specify)

IV. RECRUITMENT

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of 47 C.F.R. Section 73.2080:

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0120), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0120.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0113

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through IV should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

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October 2002

CONTACT PERSON IF OTHER THAN LICENSEE

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? ☐ Yes ☐ No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

Does your station employment unit employ fewer than five full-time employees? ☐ Yes ☐ No
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your station employment unit employs fewer than five full-time employees, complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

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October 2002

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

I. EEO PUBLIC FILE REPORT

Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.

II. NARRATIVE STATEMENT

Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

NOTICE

SHOULD YOU NO LONGER OPERATE THIS EMPLOYMENT UNIT, PLEASE FURNISH THE CURRENT OPERATOR'S NAME, ADDRESS, DATE OF TRANSFER AND RETURN THE FORM 396-C IMMEDIATELY. CALL (202) 418-1450 TO OBTAIN FORMS FOR NEWLY ACQUIRED UNITS OR IF YOU HAVE ANY EEO QUESTIONS

RETURN THE COMPLETED FORM IN DUPLICATE INCLUDING ANSWERS TO THE SUPPLEMENTAL INVESTIGATION SHEET (SIS) IF APPLICABLE AS SOON AS POSSIBLE. FOR YOUR INFORMATION, THE UPPER RIGHT HAND CORNER OF THE FORM 396-C WILL BE MARKED WITH AN "X" FOR THOSE UNITS THAT MUST FILL OUT AN SIS. PURSUANT TO SECTION 76.1802 OF THE COMMISSION'S RULES, THE DUE DATE FOR FILING FORM 396-C IS SEPTEMBER 30TH OF EACH YEAR.

FCC FORM 396-C Instructions
October 2002

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0095/0574

INSTRUCTIONS FOR COMPLETING FCC FORM 396-C

YOU ARE STRONGLY URGED TO CONSULT THE COMMISSION'S CABLE EEO RULES BEFORE COMPLETING THIS FORM 47 C.F.R. Section 76.71 et seq.

General Instructions

Supply the requested information for the unit. If the unit is to submit a Supplemental Investigation Sheet (SIS), one will be attached to the form and an "x" will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section V.

Section 1

A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.

B. Supply the address to which you want the correspondence sent.

C. Supply the county and state of the unit's principal employment office.

D. A full-time employee is one who permanently works 30 or more hours per week.

E. Insert the payroll period in July, August or September used for this year's report.

F. Place an X in the appropriate brackets for each possible exhibit.

Section II

Submit as Exhibit A, a list of communities added or deleted from the unit using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.
(NOT APPLICABLE TO MVPD UNITS)

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation. The focus of question three is on whether cable units have engaged in broad and inclusive outreach. The Commission does not require the targeting of certain kinds of sources or organizations. With regard to question five, we clarify that efforts to seek out entrepreneurs should be broad enough to cover all segments of the community, and that no entity should be excluded on the basis of race, color, religion, national origin, age or gender. See 47 C.F.R. Section 76.75.

Section IV

You may attach as Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Section V

Sign and date the form in the spaces provided. Also, print the name of the official signing as well as the title of that person. Return the original and one copy to the Commission by September 30th. Retain a copy for your files.

Supplemental Investigation Sheet (SIS)

If required, attach as Exhibits D, E, and F the job descriptions requested in Part I, the responses to the questions checked in Part II, and the EEO public file report requested in Part III.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPER REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested in this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour, 15 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0095/0574), Washington D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember – you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0095/0574.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 95-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC FORM 396-C

Approved by OMB
3060-0095

Submit the original and one copy by September 30:

Federal Communications Commission
Policy Division, Media Bureau
Washington, D. C. 20554

For FCC Use Only

Emp. Unit ID # ____________

( ) Supplemental Investigation Sheet (SIS) Attached

SECTION I IDENTIFYING INFORMATION

A. Name of Operator:		
MSO Name:		
B. Employment Unit's Mailing Address		
City	State	Zip Code
C. County and State in which unit's employment office is located		

D. Category of Respondent (check applicable box)

( ) Fewer than six (6) full-time employees during the selected payroll period: Complete Sections I, II and VIII

( ) Six (6) or more full-time employees during the selected payroll period: Complete ALL sections of the Form 395-A and the Supplemental Investigation Sheet, if attached

E. Pay Period Covered by this Report (inclusive dates)

F. Attachments: (Check applicable boxes)

Not Applicable	Attached	Exhibit - For:
( )	( )	A-Section II
	( )	B-Section III
( )	( )	C-Section IV
( )	( )	D-SIS-Job Descriptions
( )	( )	E-SIS Narrative Responses
	( )	F-SIS EEO Public File Report

SECTION II COMMUNITY INFORMATION

System Communities Comprising Local Employment Unit			
Ident No.	Name of Community	Location (State)	Type

Review the list of communities served on the previous year's submission and attach as Exhibit A any additions or deletions using the format noted above. NOTE: APPLICABLE ONLY TO CABLE OPERATORS AND NOT TO OTHER MVPD UNITS.

Exhibit No.
A

SECTION III EEO POLICY AND PROGRAM REQUIREMENTS

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

Exhibit No.
B

YES	NO		
( )	( )	1.	Have you complied with the outreach provisions of the FCC's Cable Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b) during the twelve month period prior to filing this form?
( )	( )	2.	Do you disseminate widely your EEO Program to job applicants, employees, and those with whom you regularly do business?
( )	( )	3.	Do you contact organizations, media, educational institutions, and other potential sources of applicants for referrals whenever job vacancies are available in your organization?
( )	( )	4.	Do you undertake to offer promotions to positions of greater responsibility in a nondiscriminatory manner?
( )	( )	5.	To the extent possible, do you seek out entrepreneurs in a nondiscriminatory manner and encourage them to conduct business with all parts of your organization?
( )	( )	6.	Do you analyze the results of your efforts to recruit, hire, promote, and use services in a nondiscriminatory manner and use these results to evaluate and improve your EEO program?
( )	( )	7.	Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
( )	( )	8.	Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?
( )	( )	9.	Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

SECTION IV ADDITIONAL INFORMATION

You may provide as Exhibit C any additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Exhibit No.
C

This report must be certified as follows:

A By the individual owning the reporting system if individually owned;

B By a partner, if a partnership; or

C. By an officer, if a corporation or association.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct

Signed	Title
Date	Name of Respondent
Telephone No. (include area code)	

9.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE (U.S. CODE, TITLE 47, SECTION 312(a)(1), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Give brief job descriptions for employees in the job categories specified below. The number specified in the box indicates the number of different job descriptions that are to be submitted for each category. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position.

1.	☐	Officials and Managers	4.	☐	Sales Workers	7.	☐	Operatives (semi-skilled)
2.	☐	Professionals	5.	☐	Office and Clerical	8.	☐	Laborers (unskilled)
3.	☐	Technicians	6.	☐	Craft Workers (skilled)	9.	☐	Service Workers

Part II Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X." Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ☐ Describe the employment unit's efforts to comply with the outreach provisions of 47 C.F.R. Section 76.75(b) or (f).
2. ☐ Describe the employment unit's efforts to disseminate widely its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.
3. ☐ Name the organizations, media, educational institutions, and other recruitment sources used to attract applicants whenever job vacancies become available.
4. ☐ Explain the employment unit's efforts to promote in a nondiscriminatory manner to positions of greater responsibility.
5. ☐ Describe the employment unit's efforts to encourage entrepreneurs to conduct business in a nondiscriminatory manner with all parts of its operation and provide an analysis of the results of those efforts.
6. ☐ Report the findings of the employment unit's analysis of its efforts to recruit, hire and promote in a nondiscriminatory manner and explain any difficulties encountered in implementing its EEO program.
7. ☐ Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.
8. ☐ Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices.
9. ☐ Other Inquiries:

Part III EEO Public File Report

Attach a copy of the EEO public file report from the previous year. Cable entities are required to place annually such information as is required by 47 C.F.R. Section 76.1702 in their public files.

EMP UNIT ID:

MSO NAME:
OPR NAME:

Federal Communications Commission
Washington, D. C. 20554

DRAFT
NOT Approved by OMB
3060-0922

BROADCAST MID-TERM REPORT

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through III should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

FCC 397
September 2002

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a televsion station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a televsoin station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Does your station employment unit employ fewer than ten full-time employees if television or fewer than eleven full-time employees if radio? ☐ Yes ☐ No

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full -time employees,if television, or eleven or more full-time employees if radio, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:

A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

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September 2002

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

MID-TERM REPORT

Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy ofeach of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

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FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0922), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0922.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

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September 2002

[FR Doc. 03–171 Filed 1–2–03; 11:55 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000629197–2192–03; I.D. 032900A]

RIN 0648–AN06

Atlantic Highly Migratory Species; Monitoring of Recreational Landings; Retention Limit for Recreationally Landed North Atlantic Swordfish

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and enhance management programs for these species. This rule implements a mandatory recreational landings self-reporting system for Atlantic blue marlin, Atlantic white marlin, west Atlantic sailfish, and North Atlantic swordfish; establishes a recreational retention limit for North Atlantic swordfish; adds handlines as an authorized gear for North Atlantic swordfish; clarifies language concerning applicability of recreational retention limits for sharks, yellowfin tuna, and North Atlantic swordfish; clarifies language regarding the Billfish Certificate of Eligibility (COE); and makes the criterion for determining the size and/or size class the same for both vessels commercially permitted for swordfish and recreational vessels. In addition, NMFS will promote voluntary use of circle hooks within the recreational swordfish fishery via an outreach program. The intent of these actions is to improve monitoring and conservation of overfished Atlantic billfish and North Atlantic swordfish stocks.

DATES: Effective March 2, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review (EA/RIR) may be obtained from the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. The EA/RIR may also be viewed on the Highly Migratory Species (HMS) Management Division website at *www.nmfs.noaa.gov/sfa/hmspg.html*. Send comments on any ambiguity or unnecessary complexity arising from the language in this final rule to the same address. Comments regarding the collection of information requirements contained in the final rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer.)

FOR FURTHER INFORMATION CONTACT: Russell Dunn or Rick Pearson, 727–570–5447.

SUPPLEMENTARY INFORMATION: The background and rationale for this final rule were contained in the preamble to the proposed rule published in the **Federal Register** on December 26, 2001 (66 FR 66386), and are not repeated here. Additional background is contained in the EA/RIR for this action (see **ADDRESSES**).

This final rule revises 50 CFR 635.5 to establish an enhanced monitoring program for non-tournament recreational landings of Atlantic sailfish, blue and white marlin, and swordfish through a self-reporting method based on a toll-free telephone call-in system. North Carolina and Maryland are exempted from reporting non-tournament billfish/swordfish landings since these states have modified their large pelagic/bluefin tuna catch card reporting programs to include these species. To avoid duplication, landings reported through a registered HMS tournament are exempt from the telephone call-in requirement.

This final rule also revises regulations at 50 CFR 635.22 to implement a recreational retention limit for swordfish of one swordfish per person, up to three swordfish per vessel, per trip; revises 50 CFR 635.21(d)(4) to include handlines as authorized gear in the recreational swordfish fishery to clarify the consolidated regulatory text; revises 50 CFR 635.22 to apply the daily recreational retention limits for all HMS species to vessels that are HMS Charter/Headboat (CHB) permit holders; revises 50 CFR 635.31 to clarify the consolidated regulatory text in the Billfish COE regulations; and revises 50 CFR 635.20(a) to apply the same standard of measurement to both recreational vessels and commercial vessels that have been issued a limited access swordfish permit.

Comments and Responses

NMFS held three public hearings and received written comments during the comment period on the proposed rule. Public hearings were held in Mobile, AL, on January 14, 2002; in Manteo, NC, on January 22, 2002; and in Ft. Lauderdale, FL, on January 23, 2002. Comments were submitted by recreational and commercial organizations, state agencies, conservation groups, and the general public. All comments were considered and responded to as follows:

Mandatory Self-reporting Call-in system

Comment 1: Several commenters supported the call-in system, but some raised concerns about verifying the validity of reports and enforcement of reporting.

Response: NMFS is implementing the call-in system because it provides a system to collect non-tournament billfish/swordfish landings reports (patterned after the bluefin tuna call-in reporting system) and it closes a gap in data collection when applied in concert with other programs. Also see response to comment 3.

Comment 2: One fishing group representative supported use of a call-in system for private recreational fishermen only, and using logbooks for CHB vessels.

Response: Owners of HMS Angling permitted vessels and CHB operators are responsible for reporting all non-tournament billfish/swordfish landings because not all CHB are selected to submit logbooks as specified under 50 CFR 635.5(a). Those CHB operators that are selected to submit logbooks will also have to report non-tournament billfish/swordfish landings through the call-in system. NMFS will examine response rates and work with vessel operators to reduce the reporting burden and avoid duplication.

Comment 3: Several commenters did not support the call-in system and expressed concern that there was no way to verify false reports or ensure that all non-tournament catches were reported.

Response: In the initial call-in, the caller will be asked by the automated system for the caller's phone number. NMFS personnel will then call back every angler as part of the overall system to identify the catch by boat or documentation number and avoid duplicate reporting. During the call back, the angler will be given a confirmation number. To ensure that catches are reported, NMFS will inform the public of the reporting requirement. For example, NMFS will advertise the call-in number in angler publications and distribute fliers to ports where billfish and swordfish have historically been landed, and will publicize that failure to report is unlawful.

Comment 4: Several comments, including one from a representative from a fishing club and another from a

representative of a conservation group, expressed concern that the call-in system would adversely affect goodwill existing between fishermen and scientists by imposing additional governmental paperwork. The conservation group representative suggested that NMFS duplicate the Gulf of Mexico RBS system throughout the Atlantic and implement a landing tag system to better meet international requirements.

Response: The RBS collects tournament data in the Gulf of Mexico, Atlantic, and Caribbean. The RBS at one time (before 1994) systematically sampled non-tournament sites; however, currently RBS only collects tournament data. Non-tournament data is voluntarily phoned into the RBS and these callers will be referred to the non-tournament call-in system. With this action, NMFS is attempting to get a census of non-tournament billfish/swordfish landings.

Comment 5: Several commenters stated that the call-in system was too expensive to operate, too time consuming for NMFS to manage, has no practical utility, and is not enforceable.

Response: NMFS considers this the least expensive of all the measures considered. The toll-free line already exists and the estimated number of calls are expected to be within the capacity of the system. The program is patterned after the bluefin tuna call-in reporting system. The call-in will be enforced as all fisheries management rules are enforced. In lieu of the call-in system, anglers landing billfish or swordfish in states that have elected and been approved by NMFS to conduct their own alternative recreational catch reporting program, which is allowed under 50 CFR 635.5(c)(3), will follow their states procedures for reporting. North Carolina and Maryland have chosen, with NMFS approval, to modify their large pelagic/bluefin tuna catch card reporting programs to include billfish and swordfish for reporting purposes.

Recreational Retention Measures of North Atlantic Swordfish

Comment 1: Several commenters, which included a representative from a fishing club and two national conservation groups, supported the swordfish retention limit but expressed concern about lack of law enforcement for the sale of recreationally caught swordfish.

Response: NMFS implements this provision because it is easier to enforce a retention limit than a sale restriction. In addition, NMFS believes a retention limit will reduce the number of recreationally landed swordfish that are available for sale. Through the outreach program, NMFS will remind the public that sale of recreationally landed swordfish is prohibited.

Comment 2: Several commenters, which included a representative for a sport fishermen association, noted that one swordfish per vessel per trip would have negative impacts on the CHB industry and suggested that the vessel limit be increased to accommodate more than one angler on a single vessel.

Response: NMFS has modified the final action to minimize the potential impacts on CHB operations which deal with multiple clients. The final action of one swordfish per person, up to three swordfish per vessel, per trip will accommodate multiple persons aboard a single vessel and should more closely reflect current catch patterns in this re-emerging fishery. Anecdotal information indicates that recreational catches of swordfish tend to be clustered in that several trips may not catch any swordfish while a few trips may catch several swordfish. Since not all trips are likely to be successful, NMFS expects that, on average, the three fish per vessel maximum limit will not be reached. The most recent stock assessment of North Atlantic swordfish indicates that the stock is rebuilding quickly and that current catch rates are not impeding stock recovery. As the final action should more closely reflect current catch patterns, increasing the swordfish retention limit should not impact the swordfish stock recovery. Additionally, the incidental swordfish catch quota has not been filled to date so the United States has quota available to accommodate increased landings in the recreational fishery. Therefore, NMFS has modified this portion of the rule to allow the landing of one swordfish per person, up to three swordfish per vessel, per trip.

Comment 3: Several commenters stated that this was an allocation matter, not a conservation measure.

Response: The retention limit is intended to prevent uncontrolled expansion of a re-emerging fishery and discourage the illegal sales of recreationally landed swordfish. Uncontrolled expansion of the swordfish recreational fishery could result in excess mortality, particularly on juvenile fish, that could impede stock recovery. NMFS remains concerned that the continued recovery of swordfish is sensitive to overharvests and excessive mortality of juvenile fish and the re-emerging recreational swordfish fishery off Florida occurs in a swordfish nursery area. Also see response to comment 1 above under this section.

Comment 4: A mass mailing from an organized recreational anglers group objected to the retention limit, stating that the fishery was wrongly characterized as a recent fishery but indeed that it is an historic (not a recent) incidental fishery and there was no scientific basis for the one swordfish limit.

Response: NMFS did not intend to imply in the Environmental Assessment (EA) that the fishery was new but that catching juvenile swordfish by recreational fishermen is likely increasing. In the Purpose for Action, the EA states: ‘‘With the implementation of the ICCAT North Atlantic swordfish rebuilding program and the recent closure of nursery waters off the east coast of Florida to pelagic longline fishing activities (August 1, 2000, 65 FR 47214; February 5, 2001, 66 FR 8903), further increases in recreational landings of North Atlantic swordfish, particularly juveniles, is likely to occur along the U.S. Atlantic coast.’’ Based on the large size of recreationally landed swordfish (50–200+ pounds), which cannot be sold commercially, NMFS considered a one fish per vessel limit to be reasonable for swordfish for personal consumption. However, based on comments that the proposed retention limit may impact CHB operations and to better reflect current catch patterns in this fishery, NMFS has modified the swordfish retention limit in the final action.

Comment 5: Several commenters wanted recreational vessels to have the same option as the commercial vessels to dress the swordfish at sea.

Response: NMFS has made the requested change to afford recreational fishermen the same latitude for at-sea processing as commercially permitted vessels. NMFS proposed to make the lower jaw fork length (LJFL) measurement the sole criterion for recreationally landed swordfish because recreational fishermen typically do not process fish at sea as well as the ability to measure the LJFL on a fish while it’s still alive to determine if it meets the minimum size. However, due to public comment that recreational fishermen would like the latitude to process swordfish at sea in order to ice the carcass more thoroughly, NMFS modified the final action so that the LJFL measurement will apply when the lower jaw and tail are intact. If either the tail or lower jaw is missing, the cleithrum to keel (CK) measurement or weight standard will apply in all cases.

Changes from the Proposed Rule

In response to comments received during the comment period and to clarify regulatory language, the following changes were made to the proposed rule (December 26, 2001, 66 FR 66386):

In § 635.5 (c), a lead-in paragraph was added to explain angler reporting responsibility and the wording was changed in 635.5 (c)(3) to make the intent of alternative reporting more easily understood.

In § 635.20(a), the proposed regulatory text has been amended to apply the same standard of measurement and/or size class to both recreational and commercial North Atlantic swordfish landings.

In § 635.22 (f), one North Atlantic swordfish per vessel per trip was changed to one North Atlantic swordfish per person, up to three North Atlantic swordfish per vessel, per trip.

In § 635.30(d), the proposed regulatory text has been withdrawn so that recreational vessels are not required to maintain North Atlantic swordfish with its head, fins, and bill intact through offloading.

In § 635.71, paragraph (b)(6) was revised to show that BFT reporting is now under § 635.5(c)(1) or (3) instead of § 635.5(c), paragraph (c)(6) was added to reflect changes in § 635.5 that mandated recreational self-reporting, paragraph (e)(14) was added to reflect changes in § 635.22(f) implementing a retention limit for recreationally landed North Atlantic swordfish, and paragraph (e)(15) was added to reflect changes in § 635.5(c)(2) and (3) on North Atlantic swordfish reporting. Some of these changes were necessary because the prohibitions section was omitted in the proposed rule. These changes do not alter the intent of the proposed rule.

Finally, several changes were made to conform with regulatory changes made in another final rule that published on December 18, 2002 (67 FR 77434).

Classification

This rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries, NOAA (AA), has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. NMFS received no comments during the comment period on the proposed rule that would change that conclusion. However, some CHB operators raised a concern during the public comment period with regard to the one swordfish per vessel retention limit. To respond to this concern and better reflect current catch patterns, NMFS modified the final rule to provide a one swordfish per person, up to three swordfish per vessel, per trip limit. This modification does not alter the agency's prior conclusion of no significant economic impact on a substantial number of small entities.

This final rule will apply to all participants in the recreational Atlantic marlin and North Atlantic swordfish fisheries, all of which are considered small entities. The Billfish Fishery Management Plan estimated that there were 7,915 U.S. tournament billfish anglers in the western Atlantic in 1989. A 1992 inventory of 359 billfish tournaments indicated an average expenditure of $2,147 per angler per trip (including tournament fees), or $4,242 for each fish caught, corresponding to $32,382 for each billfish landed. Swordfish are not generally included in billfish tournament prize categories and non-tournament recreational catch data are not currently systematically collected but may be frequent.

Because of the large size of most recreationally landed swordfish, the retention limit in this final action should be sufficient for swordfish intended for personal consumption, even on vessels carrying multiple anglers. Recreationally landed swordfish cannot be sold commercially, therefore no significant economic impacts are anticipated for individual anglers. The modified retention limit should also minimize any potential impacts on CHB operators. An increase in the vessel trip limit will more accurately reflect recent catch patterns in the fishery and, since many trips are unsuccessful, on average, the three swordfish per vessel limit is not expected to be reached. The swordfish fishery is a rare event fishery characterized by clustered catch rates in which several trips may result in no swordfish catches and a few trips may catch several swordfish. The call-in system takes less than 3 to 5 minutes for each no-cost report and an additional 3 to 5 minutes for a confirmation call-back, thus no significant economic impacts are anticipated.

NMFS prepared an Environmental Assessment for this rule that describes impacts on the human environment and determined that no significant impacts would result.

This final rule is consistent with the Endangered Species Act. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS issued a final rule on July 9, 2002 (67 FR 45393), to implement the reasonable and prudent alternative required by the BiOp. The fishing activities conducted pursuant to this rule will not affect listed species in any manner not already considered in the BiOp because these actions primarily address reporting requirements and are not expected to alter fishing practices or fishing effort in any way not previously considered.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0446. Public reporting burden for this collection of information is estimated to average 5 minutes per initial reporting call and 5 minutes per confirmation callback, and 5 minutes to fill out a catch reporting card (for those pilot programs conducted under state reporting systems). This action also repeats collection-of-information requirements that have been approved by OMB under control number 0648–0216. Public reporting burden for this collection of information is 20 minutes to prepare a billfish COE and 2 minutes for recordkeeping by subsequent purchasers of the billfish. 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 this burden estimate, or any other aspect of this data collection, including suggestions for the reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) *Anglers.* All bluefin tuna, billfish, and North Atlantic swordfish non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph 635.5(c) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: *www.nmfspermits.com.*

(2) *Billfish and North Atlantic Swordfish.* Anglers must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, Atlantic sailfish and North Atlantic swordfish, including those landed on a charter/headboat, to NMFS by calling 1–800–894–5528 within 24 hours of the landing. For telephone reports, a contact phone number must be provided so that NMFS can call the angler back for follow up questions and to provide a confirmation of the reported landing. The landing telephone report has not been completed unless the angler has received a confirmation number from a NMFS' designee.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS with cooperation from states which may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, catch cards, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the **Federal Register** for publication notification indicating that compliance with the state system satisfies the reporting requirements of paragraph (c) of this section.

* * * * *

3. In § 635.20, paragraph (a) is revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4. The LJFL will be the sole criterion for determining the size of whole (head on) North Atlantic swordfish for a vessel that has not been issued a limited access North Atlantic swordfish permit under § 635.4. If the head or tail of an North Atlantic swordfish has been removed prior to or at the time of landing, the CK or minimum weight standard shall be applied in all cases.

* * * * *

4. In § 635.21, paragraph (d)(4)(iv) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(4) * * *

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

5. In § 635.22, paragraphs (a), (c), and (d) are revised, and paragraphs (e) and (f) are added to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

* * * * *

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a limited access vessel permit under § 635.4 for Atlantic sharks. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

(d) *Yellowfin tuna.* Three yellowfin tunas per person per day may be

retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

(e) *Bluefin tuna.* Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish.* One North Atlantic swordfish per person up to three per vessel per day may be retained. Regardless of the length of a trip, no more than the daily limit of North Atlantic swordfish may be possessed on board a vessel. The recreational retention limit for North Atlantic swordfish applies to a person who fishes in any manner, except to a person aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

6. In § 635.31, paragraph (b)(2)(ii) is revised and paragraph (b)(3) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(b) * * *

(2) * * *

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form, obtained from NMFS, or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English, the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all of the information required under this section.

(3) For the purposes of this paragraph, a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

* * * * *

7. In § 635.71, paragraph (b)(6) is revised and paragraphs (c)(6), (e)(14), and (e)(15) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(6) As an angler, fail to report a BFT, as specified in § 635.5(c)(1) or (3).

* * * * *

(c) * * *

(6) As an angler, fail to report a billfish, as specified in § 635.5(c)(2) or (3).

* * * * *

(e) * * *

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As an angler, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (3).

[FR Doc. 03–275 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011219306–2283–02; I.D. 110501A]

RIN 0648–AM44

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to refine observer coverage requirements and improve support for observers. This action is intended to ensure continued collection of high quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) and to promote the goals and objectives contained in those FMPs.

DATES: Effective on February 5, 2003.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory action and the 1996 Environmental Assessment (EA) RIR/FRFA prepared for the Interim North Pacific Groundfish Observer Program and the RIR/FRFAs for the subsequent extensions of the Interim North Pacific Groundfish Observer Program may also be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the 1996 Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). The program was extended again through 2007 by way of a final rule published on December 6, 2002 (67 FR 72595). The Interim Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel,

processor, and contractor responsibilities relating to the Observer Program. NMFS intends the Interim Program to be effective until a long-term program is developed and implemented that addresses several current concerns. These concerns include data integrity, observer compensation, working conditions for observers, and equitable distribution of observer costs.

NMFS is working with the Council and the Council's Observer Advisory Committee (OAC) to address the above concerns and others through development of new options for an alternative infrastructure for the Observer Program.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rules extending this program through 1998 and again through 2000 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997; 63 FR 47462, September 8, 1998; and 63 FR 69024, December 15, 1998, respectively).

A proposed rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on April 2, 2002 (67 FR 15517), for a 30–day public review and comment period that ended on May 1, 2002. NMFS received 2 letters of comment on the proposed rule which are summarized and responded to in Response to Comments, below.

This final rule addresses concerns about (1) shoreside and stationary floating processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing for groundfish with pot gear; and (4) confidentiality of observer personal information.

Shoreside or stationary floating processor observer coverage. New regulations will maintain the current monthly observer coverage periods at shoreside or stationary floating processors based on monthly landings projections. However, during a month when a directed fishery for pollock or Pacific cod closes, a shoreside or stationary floating processor with 100–percent coverage requirements that received pollock or Pacific cod from the fishery that closed in that given month would have the option to reduce observer coverage to 30–percent coverage requirements for the remainder of that month under certain conditions. These conditions are: (1) the shoreside or stationary floating processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed for the remainder of that month; and (2) groundfish landings received by the shoreside or stationary floating processor may not exceed 250 mt/calendar week for the remainder of that month. If a shoreside or stationary floating processor is expected to receive greater than 250 mt/wk during any calendar week of that month, the shoreside or stationary floating processor would be required to return to 100–percent observer coverage for the days fish are received or processed during that week until all groundfish received during that week is processed.

The reduced observer coverage period for a given shoreside or stationary floating processor would be authorized beginning on the fourth calendar day following the day that a pollock or cod fishery closes, allowing for observation of the delivery and processing of fish received prior to the closure, and would end on the last day of that month. Observer coverage for the month following would be based on monthly landings projections and thresholds as specified under current regulations at § 679.50, but also may be reduced for that month under the conditions of this action.

The Community Development Quota (CDQ) and American Fisheries Act (AFA) programs' observer coverage requirements found at § 679.50(d)(4) and (5), respectively, currently supersede general observer coverage requirements for shoreside or stationary floating processors, and will continue to take precedence over this allowance for reduced coverage.

Shoreside or stationary floating processor observer logistics. This final rule amends the observer regulations to require the observer provider company to provide the following logistical support to observers deployed at shoreside or stationary floating processors: Adequate housing meeting certain standards; reliable communication equipment such as an individually assigned phone or pager for notification of upcoming deliveries or other necessary communication; and, if the observer's accommodations are greater than 1 mile away from the processing facility, reliable motorized transportation to the shoreside processor that ensures timely arrival to allow the observer to complete assigned duties.

Groundfish pot fishery observer coverage requirements. This final rule also amends regulations governing coverage requirements for the groundfish pot gear fishery to require a vessel equal to or longer than 60 ft (18.3 m) length overall (LOA), fishing with pot gear that participates more than 3 days in a directed fishery for groundfish in a calendar quarter, to carry an observer during at least 30 percent of the total number of pot retrievals for that calendar quarter. Such vessels would also need to continue to carry an observer for at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories in which the vessel participates during that calendar quarter. Groundfish will still be required to be retained each day the observer is on board and gear is retrieved, in order for the gear retrieved on that day to count toward observer coverage requirements.

Confidentiality of observer personal information. Observer providers are required to ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

Response to Comments

Two letters on the April 2, 2002, proposed rule (67 FR 15517) were received that contained a total of 15 unique comments. Comments are summarized and responded to here.

Comment 1: Observer coverage should be flexible before a fishery opens as well as when it closes. Many of the directed fisheries in the Gulf of Alaska start mid-month. The way the regulations are written, a shoreside processor is required to have an observer 100 percent of the time during that month even though the fishery which will trigger the coverage will not occur until many days into the month. The regulation change regarding the step down in coverage needs to be a two-way door, prior to a fishery season opening date and after a fishery closure date.

Response: NMFS considered both options in the analysis prepared for the proposed rule and continues to support the revised coverage regulations as proposed. The analysis showed that if shoreside processors were given the leeway to reduce coverage based on some landings criteria both before and after fishery closures, observer coverage for shoreside plants would essentially shift to a system of weekly observer coverage based on weekly landings projections. The analysis concluded that such a change would result in an observer coverage system for shoreside

processors that would be extremely burdensome, both financially and logistically, to shoreside processors, observer providers, and observers. The primary causes of this burden would be the logistical complexities and costs involved in deploying observers to and from shoreside processors on a weekly basis. NMFS would be supportive of a reexamination of these issues in the future, if the Council develops an alternative observer delivery model that would provide for weekly coverage standards in a cost effective and practical manner.

Comment 2: Virtually all IFQ sablefish received by Kodiak shoreside processors are eastern headed and gutted fish. The present shorebased observer regulations require 100 percent observer coverage for sablefish landings for some months. Why do observers need to observe these landings if there are no biological data to collect from headed/gutted fish? IFQ sablefish should be exempted from shorebased coverage requirements.

Response: Observer data are used in preparing annual stock assessments for sablefish. In particular, both catch rate and length data are used. Not all IFQ sablefish are delivered headed and gutted, some are delivered whole in refrigerated seawater. Observers obtain length data and otoliths from those fish. Observers also collect information from other groundfish that are delivered with IFQ sablefish.

Comment 3: According to the analysis prepared for this proposed rule, a shoreside processor that has chosen to reduce observer coverage to 30 percent does not have the ability to increase coverage back to the 100–percent level for the pollock and Pacific cod reopener. This provision needs to be highlighted in the regulations. NMFS also needs to make a concerted effort to communicate with industry regarding any reopening before the 4 day window expires after a fishery closes, when a plant is allowed to reduce coverage from 100 percent to 30 percent for the remainder of the month.

Response: The proposed rule correctly stated that a shoreside processor that has reduced observer coverage from 100 percent to 30 percent in a given month under the terms of this rule, and subsequently expects to receive or process greater than 250 mt per week upon the reopening of a Pacific cod or pollock fishery in that same month, must return to 100–percent coverage for each subsequent week of that month in which 250 mt or greater is expected to be received or processed. The commentor is correct in asserting that the analysis prepared for this rule did not include the provision for returning to 100–percent coverage upon the reopening of a Pacific cod or pollock fishery. The analysis has since been revised to reflect this provision in the rule, and no change from the proposed rule is made to the final rule.

NMFS strives for timely communication with industry regarding the reopening of a closed fishery. Once harvest amounts relative to available total allowable catch are determined, NMFS provides the public notice of any fishery reopening in a manner that is intended to minimize operational costs to industry. In 2002, the reopenings of the GOA pollock fishery occurred only in the Central Regulatory Area (statistical area 630) and were announced within a 3–4 day time period after the fishery closed. NMFS intends to continue to provide this level of effective response to the extent practicable.

Comment 4: According to the analysis prepared for the proposed rule, the ability to reduce observer coverage to 30 percent (from 100 percent during a given month) related to fisheries closures other than for Pacific cod or pollock was not considered because of concerns regarding loss of data for a variety of species that are landed in small quantities. However, the Kodiak shoreside processors are the only shorebased processors in Alaska that currently offer markets for the directed rockfish and flatfish harvests. Therefore, this exclusion directly impacts this subset of processors. The idea that more observer data will be collected if the plant maintains 100–percent observer coverage beyond the end of the season is flawed. Once a fishery closes, no more catch will be delivered for those species and, therefore, there is no additional opportunity to collect data. Also, for both flatfish and rockfish, allocations are split between the catcher/processor and the shorebased processor sector, so additional data are available from the catcher/processors. Allowing the regulations to extend to the other directed fisheries besides pollock and Pacific cod would help reduce shorebased observer cost without impacting observer data.

Response: NMFS analyzed the impacts of the reduction of shoreside processor observer coverage requirements on observer data and associated costs based on requests from industry and the resulting Council motion. The industry request and Council motion were limited to reducing shoreside observer coverage from 100 percent to 30 percent based on pollock and Pacific cod directed fishery closures. Therefore, consideration of observer coverage reduction at shoreside processors relative to closures for other directed fisheries is beyond the scope of the analysis prepared for this action. While there may be some advantage in extending this type of coverage reduction mechanism to other directed fishery closures, NMFS intends to implement this change as described in the proposed rule. NMFS, in consultation with the Council, may consider extending this provision to other fisheries after review of the implementation of this provision in the pollock and Pacific cod fisheries.

Comment 5: NMFS has indicated that in some circumstances it is acceptable for an observer to lodge on a vessel after the observer has been released from duty on a vessel, but not prior to the requested date of deployment of the observer to a vessel. However, no guidelines exist as to what those acceptable circumstances might be. NMFS has provided verbal guidance that it would be acceptable for an observer to lodge on a vessel if the observer was released from duty at 3 a.m.; but apparently it would not be acceptable to lodge on the vessel if the vessel wants to depart at 3 a.m. Not allowing contractors to have the flexibility to lodge observers on vessels that they are or will be assigned to, and not allowing vessels to have the option to minimize lodging costs will significantly increase costs to vessels who frequently volunteer to lodge their observers earlier or later than needed for their coverage.

Response: The final rule has been clarified to provide clearer guidance on when observers may be housed on vessels they will be, or currently are, assigned to. The intent of this regulation is to avoid the lodging of an observer aboard a vessel on which he or she is not working or currently assigned. An observer released from duty aboard a vessel could lodge aboard the vessel for no more than 24 hours provided the skipper or at least one crew member is aboard while the observer is lodged there, and provided this lodging is logistically practical for the observer and the vessel personnel. If the observer wants to get off the vessel as soon as it docks or if the vessel skipper requests the observer leave upon docking, arrangements must be made by the observer provider for the observer to move to land-based accommodations. Likewise, an observer assigned to a vessel would be allowed to lodge on that vessel up to 24 hours prior to departure, provided the skipper or at least one crew member is aboard, and as long as this is logistically practical for the observer and the vessel personnel.

Comment 6: Can shoreside processors provide their own internal pager system as a means for communication with the observer assigned to that processor?

Response: The observer provider company is ultimately responsible for ensuring that observers are issued individual communications devices and maintaining them in working order as specified in the rule. If it is logistically more convenient to meet these requirements through an arrangement with the shoreside processor, the observer provider company may do so.

Comment 7: If the present communication system between shoreside processors and their observers is working, is a pager or cell phone necessary?

Response: Yes. While the present communications systems between processors and observers may be successful for some processors, the current approach is not working for others. In light of these failures, NMFS believes that regulation on how these important communications must occur is necessary to some degree. Communications are largely reliant on the dependability of the individuals involved, as well as the communications equipment available. In cases where individuals involved are highly dependable, any system has a better chance of working. NMFS cannot control the level of human dependability in all cases, but the agency can require a certain standard for communications equipment that must be available to individual observers. In promulgating such regulations, NMFS must apply these requirements to all shoreside processors without bias.

Comment 8: What accommodations will be made for those shoreside processors where cell and or pager services are not available?

Response: Where cell phone or pager service is not available at the location of the shoreside processor, walkie-talkies may be an acceptable substitute. However, due to inherent range restrictions and unreliability of these devices, they would be approved only on a case by case basis. Where cell phone or pager service is not available and walkie talkies are not approved, another method of communication between the processor and the observer would need to be proposed by the observer provider company to the Observer Program for approval.

Comment 9: Who is responsible for lack of compliance when an observer drops his or her cell/pager in the harbor while going out to a vessel and it takes a lot of money and a week to get a new one to the observer? What obligation does the plant have to notify the observer during that down time?

Response: The observer provider company is responsible for ensuring observers have individual communications devices in working order. If a device ceases to be in working order, the provider must provide a back up device in a timely manner such that the observer is able to communicate with the processor regarding the next delivery following the loss or failure of the communications device. In light of that, having one or two working back-up devices on site at all times to avoid ''down time'' makes logistical sense. The regulations do not include an exception for ''down time''.

Comment 10: Who is liable if the observer takes the pager out of cell/pager range?

Response: The observer provider company is responsible for providing the equipment in working order. As is currently the case, the observer is expected to remain in reasonable communication with the processor. That includes remaining in range of such communication devices as the individual circumstances of the shoreside processor operations and location dictate.

Comment 11: It is unclear whether the criteria for lodging an observer assigned to a shoreside plant ''within a mile of a shoreside processor'' is determined by road distance or ''as the crow flies''.

Response: This requirement relies on the distance along the road or path traveled by the observer between his or her lodging and the shoreside processor to which he or she is assigned.

Comment 12: In some ports where observers lodge away from the plant premises, taxi service is not available 24 hours/day. Under these conditions, what will happen when a taxi is not available and the observer has to rely on transportation from the plant given that NMFS has implied in the analysis that plant transportation is unreliable? Plants which have to lodge their observers more than a mile away will see a significant increase in transportation costs for their observers. Is there any time a taxi would not be considered acceptable motorized transportation?

Response: Reliable, alternate arrangements that meet the requirements of the rule must be made when a taxi is not available. A taxi would not be considered acceptable transportation if it cannot transport an observer to the shoreside processor in a timely manner to allow the observer to perform his or her official duties. These duties include being present at the processor at appropriate times during the delivery and/or processing of the fish from delivery that requires sampling. Once in a while, a taxi may not be able to deliver an observer to the assigned shoreside processor in a timely manner to perform assigned duties due to unexpected mechanical break down of a taxi or other unforeseen circumstances. However, if such events become chronic and transportation by taxi becomes unreliable and untimely, alternate transportation arrangements that conform to the regulatory requirements must be made.

Comment 13: Do observers still have the option of walking or taking a bike to their assigned plant if they prefer to do so?

Response: Yes. Observers may choose to walk or ride a bicycle between their shoreside lodging and the shoreside processor to which they are assigned, as long as transportation, as described in regulations, is always available.

Comment 14: If this new regulation goes into effect, vessels using pot gear would be forced to wait until near the end of the season or quarter to obtain their 30–percent coverage for the number of pot lifts they performed. Consequently, the demand for observer coverage may exceed the availability of observers. Vessels may not be able to comply with required coverage as contractors would be less likely to be able to cover all of the pot boats during the end of the season crunch. Additionally, under those circumstances, vessels will see cost increases because they won't be able to share observer airfare, transportation and subsistence costs with other vessels.

Response: NMFS believes that proper planning by pot gear vessels and observer providers can ensure observer availability in most cases. However, NMFS does acknowledge that last minute changes in management decisions related to fishery openings and closures can present challenges for compliance with observer coverage requirements. NMFS strives to take coverage needs into consideration when determining midseason fishery openings.

This regulation, which bases observer coverage levels on the actual amount of gear fished, rather than days fished, is intended to ensure observer data that are more representative of actual fishing effort. The majority of vessels, for which days fished does reflect average fishing effort over the course of a quarter or season, should see no substantive change in the way they estimate observer coverage needs. Likewise, no more problem should exist with observer availability at the end of the quarter or season than what is currently

experienced. Additionally, observer coverage needs should be somewhat predictable over time, allowing vessels to meet coverage needs prior to the end of the season or quarter.

Comment 15: We believe that this proposed regulation would not solve the identified issue of pot gear vessels going out just beyond the harbor and pulling one pot to obtain observer coverage for that day. Vessels would now be able to set just a few pots and pull them as many times as possible in one day to obtain a large portion of their coverage.

Response: NMFS does not anticipate this type of behavior, particularly because it would not be cost effective. If and when this behavior occurs, NMFS will respond accordingly.

Changes From the Proposed Rule

To provide clarity in the application of certain provisions of this action, regulatory text in § 679.50(d)(3) and (i)(2) is changed from the proposed rule. Nearly all Observer Program regulations that apply to shoreside processors also apply to stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. Thus, the final rule is changed from the proposed rule to apply to both shoreside processors and stationary floating processors.

The final rule also is changed to reflect revised regulatory text that became effective January 1, 2003, under a separate final rule that extended the Observer Program through December 31, 2007 (67 FR 72595, December 6, 2002). These changes include redesignating proposed changes to paragraphs (i)(2)(v) and (i)(2)(xiii) as final changes to paragraphs (i)(2)(vi) and (i)(2)(xii), respectively. The portion of redesignated paragraph (i)(2)(xii) that addressed an expectation of observer providers to monitor observer performance is deleted because this provision was superceded in the December 6, 2002, final rule. Last, redesignated paragraph (i)(2)(vi) is revised to incorporate the regulatory guidance referenced to in the response to comment 5.

Classification

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

The amendment of the existing regulations implementing the Interim Observer Program is consistent with the intent and purpose of the Interim Observer Program. These actions follow previous actions to refine observer coverage requirements and improve support for observers. Previous actions addressing these matters were analyzed in the EA/RIR/FRFA for the Interim Observer Program dated August 27, 1996, the RIR/FRFA for the extension of the Interim Observer Program through 1998 dated October 28, 1997, and the RIR/FRFA for the extension of the Interim Observer Program through 2000, dated June 4, 1998. Copies of these analyses are available from NMFS (see ADDRESSES).

NMFS prepared a FRFA which describes the impact this final rule would have on small entities. A copy of the FRFA is available from the Regional Administrator (see ADDRESSES). In addition to the discussion below, the FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings, and the finding from the EA/RIR/FRFA for the Observer Program and its extension. No comments on the IRFA were received during the public comment period on the proposed rule. Thus, no new data were incorporated into the analysis during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 15520, April 2, 2002) and is not repeated here.

This action includes measures that will minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Vessels 60 ft (18.3 m) and greater, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) and above. Since the inception of the North Pacific Groundfish Observer Program in 1989, NMFS has strived to mitigate the economic impacts of the observer program on small entities. In doing so, NMFS has not significantly adversely affected the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Fishery Conservation and Management Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 30, 2002.

Rebecca Lent,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.50, paragraphs (d)(3) through (6) are redesignated as (d)(4) through (7); paragraph (c)(1)(vii), newly redesignated paragraph (d)(4) and paragraphs (i)(2)(vi) and (i)(2)(xii) are revised; and new paragraph (d)(3) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(1) * * *

(vii) Vessels using pot gear. (A) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer:

(*1*) For at least 30 percent of the total number of pot retrievals for that calendar quarter, and

(*2*) For at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(B) Groundfish are required to be retained each day that pot gear is retrieved in order for gear retrieved that day to count toward observer coverage requirements for all catcher vessels and catcher/processors using pot gear and required to carry observers.

* * * * *

(d) * * *

(3) Is subject to observer requirements specified in paragraph (d)(1) of this section that receives pollock or Pacific cod, may reduce observer coverage in the event that a directed fishery for such species closes, subject to the following conditions:

(i) The shoreside or stationary floating processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed, beginning on the fourth calendar day following the day that the directed fishery for pollock or Pacific cod was closed and ending on the last day of the month, except as allowed in this paragraph (d)(3)(iv) of this section.

(ii) Observer coverage for the month following the month with reduced observer coverage will be based on monthly landings projections and thresholds as specified in paragraphs (d)(1) and (2) of this section, but may also be reduced for that subsequent

month as specified in this paragraph (d)(3) of this section.

(iii) Total groundfish landings received by a shoreside or stationary floating processor under reduced observer coverage as authorized under this paragraph (d)(3) may not exceed 250 mt per calendar week.

(iv) If greater than 250 mt in round weight equivalent of groundfish are projected to be received in a given calender week by a shoreside or stationary floating processor during a month with reduced observer coverage, as authorized under this paragraph (d)(3), the shoreside or stationary floating processor must return to observer coverage requirements as specified in paragraph (d)(1) of this section until all fish received during that week is processed. The shoreside or stationary floating processor may then return to reduced observer coverage as authorized under this paragraph (d)(3) for the remainder of the calendar month.

(4) Offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area.

*   *   *   *   *

(i) * * *

(2) * * *

(vi) Observer deployment logistics. (A) An observer provider must provide to each of its observers under contract:

(*1*) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(*2*)Lodging, per diem, and any other necessary services to observers aboard fishing vessels or at the site of shoreside or stationary floating processing facilities.

(B) Except as provided in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this section, each observer deployed to a shoreside processing facility, and each observer between vessel or shoreside assignments while still under contract with a certified observer provider company, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, or with private land-based accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an individually assigned bed for each observer for the duration of that observer's shoreside assignment or period between vessel or shoreside assignments, such that no other person is assigned to that bed during the same period of the observer's shoreside assignment or period between vessel or shoreside assignments. Additionally, no more than four beds may be in any individual room housing observers at accommodations meeting the requirements of this section.

(C) Observers may be housed on vessels they will be, or currently are, assigned to for a period not to exceed 24 hours:

(*1*)Prior to their vessel's initial departure from port;

(*2*)Following the completion of an offload where the observer has duties and is scheduled to disembark; or

(*3*)Following the completion of an offload where the observer has duties and is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel skipper or at least one crew member is aboard and that such housing is logistically practical for the observer and the vessel personal. Alternative housing accommodations must be arranged if the conditions in this paragraph (D) are not met or if the observer wants to get off the vessel as soon as it docks or if the vessel operator requests the observer to leave upon docking.

(E) Each observer deployed to shoreside processing facilities shall be provided with individually assigned communication equipment in working order, such as a cell phone or pager for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties. Unless alternative arrangements are approved by the Observer Program Office:

*   *   *   *   *

(xii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

*   *   *   *   *

[FR Doc. 03–177 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 4

Tuesday, January 7, 2003

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–139–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). OSM is proposing to remove the required amendment because the Federal regulation upon which the required amendment is based no longer exists. This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. on February 6, 2003. If requested, we will hold a public hearing on the amendment on February 3, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 22, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Mr. George Rieger, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, (717) 782–4036, *grieger@osmre.gov.*

J. Scott Roberts, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, PA 17105–8461, (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036 Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Description of the Proposed Amendment

The regulations at 30 CFR 938.16(ss) require Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a provisionally issued permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii) we noted:

> Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Rather than requiring the permittee to submit proof that an affirmed violation is being corrected, as required in 30 CFR 938.16(ss), the new rule requires the regulatory authority to initiate action to suspend or revoke the permit if a violation is affirmed. Because the Federal rule change renders the required amendment at 30 CFR 938.16(ss) unnecessary, we are proposing to remove the required amendment. However, at a later date, we will be informing Pennsylvania and other States by letter of any changes required in their

programs as a result of the above-referenced change to the Federal ownership and control regulations, as well as a result of other changes we made to those regulations on December 19, 2000.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the removal of the required amendment satisfies the applicable program criteria of 30 CFR 732.15.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. PA–139'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on January 22, 2003 If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. In 65 FR 79582, we made several changes to the Federal regulations, including the elimination of the counterpart Federal regulation. Taking all of the changes made into consideration, we noted in that **Federal Register** notice that ''in accordance with Executive Order 12630, the rule does not have significant takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.'' Since the elimination of the counterpart Federal regulation had no takings implications, the removal of the amendment requiring the corresponding State provision will have no takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In the December 19, 2000 **Federal Register** notice eliminating the counterpart Federal regulation, we estimated that there would be no change to industry costs resulting from the changes made to 30 CFR part 773, which, before the changes, had contained the counterpart Federal regulation (65 FR 79582, 79659). Similarly, the removal of the amendment requiring the corresponding State provision will not have a significant economic impact.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated above, this rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that, by removing the required amendment, we are not mandating any State action.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–157 Filed 1–6–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA085/086/089/102/103–5046b; FRL–7428–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. EPA is proposing approval of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations.

In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 6, 2003.

ADDRESSES: Written comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 17, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–94 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 02–381; FCC 02–325]

Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document seeks comment on the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas. In addition, we request comment on the extent to which rural telephone companies (''rural telcos'') and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services. This document fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals.

DATES: Comments are due on or before February 3, 2003 and reply comments are due on or before February 18, 2003.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4–B551, 445 12th Street, SW., Washington, DC 20554. See ''Supplementary Information'' for comment and reply comment filing instructions.

FOR FURTHER INFORMATION CONTACT: Robert Krinsky at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Inquiry* released on December 20, 2002. The complete text of the *Notice of Inquiry* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Notice of Inquiry* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. Introduction

1. The *Notice of Inquiry* seeks comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas, pursuant to section 309(j) of the Communications Act of 1934, as amended (''Communications Act''). In addition, we request comment on the extent to which rural telephone companies (''rural telcos'') and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services, pursuant to sections 309(j)(3) and 309(j)(4) of the Communications Act. The *Notice of Inquiry* fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals. Based on the record developed in this proceeding, we will determine whether it would be appropriate to revise existing policies or adopt new policies to promote more extensive provision of spectrum-based services to rural areas and the acquisition of spectrum by rural telcos. While satellite services may, in the future, play a critical role in bringing telecommunications services to rural America, the *Notice of Inquiry* addresses issues related only to the provision of terrestrial wireless service to rural areas, not the provision of general telecommunications services to rural areas.

II. Background

2. The Omnibus Budget Reconciliation Act of 1993 added section 309(j) to the Communications Act, authorizing, but not requiring, the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are accepted for filing. In 1997, Congress expanded the Commission's auction authority by requiring it to award mutually exclusive license applications for initial applications or construction permits by competitive bidding unless certain specific exemptions apply. Section 309(j) requires the Commission to promote various objectives in designing a system of competitive bidding. A number of those objectives focus on the provision of spectrum-based services to rural areas, and three provisions mention providing the opportunity to rural telcos to acquire spectrum and provide spectrum-based services. For example, section 309(j)(3)(A) requires the Commission to encourage the development and rapid deployment of new technologies, products, and services for the benefit of the public, ''including those residing in rural areas.'' Section 309(j)(3)(B) directs the Commission to disseminate spectrum licenses among a wide variety of applicants, including ''rural telephone companies.'' Section 309(j)(4)(D) requires the Commission to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-based services. In addition to the rural service objectives mandated by section 309(j), Congress directed the Commission to pursue other broader public interest goals in designing a system of competitive bidding. Specifically, section 309(j)(3) requires the Commission to promote efficient and intensive use of the spectrum, encourage economic opportunity and competition, and recover for the public a portion of the value of the public spectrum.

3. In an effort to fulfill the rural service objectives set forth in section 309(j), the Commission has adopted a number of policies intended, among other things, to encourage the provision of spectrum-based services to rural areas and the participation of rural telcos in the competitive bidding for spectrum licenses. Specifically, these policies include: (i) The availability of small business bidding credits; (ii) the designation of various sizes of geographic service areas for spectrum licenses; (iii) the opportunity to obtain licenses through service area partitioning and spectrum disaggregation arrangements with existing licensees; and (iv) the adoption of construction benchmark performance requirements. In addition, apart from its obligation under section 309(j), the Commission has expressed support for the provision of telecommunications services to tribal lands. The Commission also established the Rural Radiotelephone Service, which may operate in the paired 152/158 and 454/459 MHz bands, and Basic Exchange Telephone Radio Systems (''BETRS''), which may operate in those same bands as well as on 10 channel blocks in the 816–820/861–865 MHz bands, primarily to facilitate the provision of basic telephone service to remote and sparsely populated areas where wireline service is not feasible.

4. In 1994, the Commission adopted small business bidding credits to encourage broad participation in spectrum auctions. A bidding credit is a payment discount on a winning bid determined at the conclusion of the bidding process. Small business bidding credits are available to businesses — including rural telcos — whose gross revenues do not exceed a specified threshold. These bidding credits are intended to encourage participation in the competitive bidding process by entities that otherwise might have difficulty gaining access to capital. Through the use of small business bidding credits, the Commission has sought to promote the participation of small businesses, rural telcos, and women- and minority-owned firms

(collectively referred to as ''designated entities''), thereby addressing Congress's mandate to ensure diversity in the ownership of spectrum licenses. The Commission determines on a service-specific basis whether bidding credits will be offered, the eligibility criteria for receiving a bidding credit, and the amount of the bidding credit.

5. However, in the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission declined to adopt a bidding credit specifically for rural telcos. Rather, the Commission determined to continue to make small business bidding credits available to entities, including rural telcos that meet the requisite revenue criteria. In 2000, the Commission also began offering a tribal land bidding credit, the size of which is determined by the amount of tribal land area reached by the service provider. All telcos, including rural operators that fulfill the requisite criteria may obtain a tribal land bidding credit.

6. Recent statistics indicate that rural telcos have actively participated in spectrum auctions and have had some success in winning licenses. A significant portion of rural telcos that have participated in spectrum auctions have received small business bidding credits. For instance, an examination of the 29 auctions completed by the Commission as of September 18, 2002, that offered small business bidding credits, reveals that 84 percent of the qualified bidders that identified themselves as rural telcos and 79 percent of all qualified bidders were eligible to receive a small business bidding credit. In the Commission's most recent auction for licenses in the lower 700 MHz Band, 89 percent of qualified bidders that identified themselves as rural telcos won licenses. In addition, 77 percent of all winning rural telco bidders in that auction received a bidding credit.

7. In addition to bidding credits, another way in which the Commission has sought to enhance rural telco participation in spectrum auctions is by adopting service areas of varying sizes. Although in many services we offer licenses that cover geographic areas of only one size, in a number of services, we license areas of varying sizes, ranging from small to large, in order to attract a diverse group of prospective bidders. Larger entities, for instance, may seek to acquire licenses that cover whole regions of the country, while other entities, such as rural telcos, may be interested in obtaining licenses to serve only particular rural areas. After seeking comment, the Commission has varied the size of the geographic service area depending upon the nature of the service provided and the likely users. In services for which we have adopted one size of license area, such areas are usually larger than Rural Service Areas (''RSAs''). In determining the appropriate size of a license area, we seek to balance two competing concerns. On one hand, we seek to adopt service areas of a size that results in efficient and intensive use of spectrum resources. On the other hand, we seek to adopt licensing areas that will permit the dissemination of licenses among a wide variety of applicants. The smallest of these geographic service areas are RSAs and Metropolitan Statistical Areas (''MSAs''), of which there are 734 licenses comprising the United States and its territories. Adopting service rules that provide for licenses with small geographic areas allows bidders to target the precise areas they are interested in serving, rather than having to compete for expansive geographic areas that encompass smaller, sought-after areas. The Commission has also licensed spectrum according to Economic Area Groupings (''EAGs''), which make up six licensing areas for the entire country. Some terrestrial wireless services, such as narrowband Personal Communications Services (''PCS'') and 1670–1675 MHz, have geographic service areas that have nationwide coverage. Other geographic service areas fall along a range of intermediate sizes between RSAs and nationwide service areas, *e.g.*, BTAs, Economic Areas (''EAs''), and Major Economic Areas (''MEAs'').

8. The Commission has also adopted partitioning and disaggregation policies to enable service providers, including rural telcos, to acquire spectrum without bidding on licenses that may not be suited to their particular needs. ''Partitioning'' is the assignment by a licensee of geographic portions of the license. ''Disaggregation'' is the assignment by a licensee of discrete portions or ''blocks'' of spectrum of the license. Where permitted by our rules, licensees may partition or disaggregate any of their licensed spectrum to other entities. Obtaining spectrum through partitioning or disaggregation, rather than competitive bidding, is often appealing to service providers with limited financial resources, specific service area needs, or small bandwidth requirements because licenses offered at auction may be more costly, cover larger geographic areas, and have greater bandwidth than desired. For instance, the geographic service area of a license made available at auction may include both urban and rural areas. A rural telco interested in serving only a rural area may seek to obtain spectrum post-auction through partitioning or disagregation, rather than bid for a license covering an area that it does not intend to serve. In this manner, our partitioning and disaggregation policies may help service providers, such as rural telcos, to obtain spectrum tailored to their specialized service area and financial needs. The Commission's analysis of applications for geographic partition and spectrum disaggregation reveals that 13.5 percent of all assignees have voluntarily identified themselves as rural telcos. Our analysis also demonstrates that 13.8 percent of all assignees (including rural and non-rural telcos) claim they are, or will be, serving rural areas.

9. The Commission has sought to enhance service to rural areas by requiring winning bidders of spectrum licensees to meet certain performance requirements. Section 309(j)(4)(B) of the Act specifically directs the Commission to prescribe such ''performance requirements'' to ensure prompt delivery of service to rural areas, to prevent stockpiling of spectrum, and to promote investment in and rapid deployment of new technologies and services. Performance requirements include construction benchmarks. Construction benchmarks typically require licensees to serve either a specific portion of the geographic service area or a specific percentage of the population in the geographic service area by a certain period of time. In some instances, the Commission has adopted a ''substantial service'' requirement as its construction requirement. Under this approach, licensees are required to provide ''substantial service'' to either a geographic service area or to the population within the geographic service area within a specific period of time. The Commission has defined ''substantial service'' as ''service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.'' The ''substantial service'' requirement was established to assess meaningful service through a measure not based on population or geographic metrics. Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. The Commission may consider such factors as whether a licensee's operations serve

niche markets or focus on serving populations outside of areas served by other licensees. The Commission has indicated that a ''substantial service'' construction requirement may help foster service to less densely populated areas. Because this requirement can be met in a variety of ways, the Commission has stated that it will review substantial service showings on a case-by-case basis. The Commission has rarely found that a commercial mobile radio service (''CMRS'') carrier has failed to meet its performance requirements.

10. Another step the Commission has taken to encourage the provision of wireless services to rural areas is the retention, in RSAs, of the cellular cross-interest rule, which is designed to protect against the cellular incumbents developing cross interests that may create the incentive and ability to restrict the availability of services in those areas. The cellular cross-interest rule limits the ability of parties to have attributable interests in cellular carriers on different channel blocks in a single geographic area. In its recent reevaluation of this rule, the Commission determined that the cross-interest rule was no longer necessary in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer existed. However, the Commission found that in RSAs competition to the incumbent cellular licensees was not as developed as in MSAs. Accordingly, the Commission concluded that a combination of interests in cellular licensees serving RSAs would more likely result in a significant reduction in competition in these areas. The Commission therefore decided to retain the cellular cross-interest rule in RSAs, subject to waiver of the rule based on certain conditions. The Commission noted that retention of the cross-interest rule in RSAs does not preclude cellular carriers from obtaining PCS licenses in order to expand capacity or offer advanced services.

III. Request for Comment

11. Under section 309(j), the Commission has a statutory mandate to promote the development and deployment of wireless technologies to rural areas and economic opportunities for rural telcos and other entities seeking to serve rural areas. Indeed, as discussed, the Commission has implemented a number of initiatives toward achieving those goals. We seek to better understand the nature of spectrum supply and demand and the services currently provided and planned to be offered in rural areas. We are also interested in developing a record on whether there are any discrepancies between rural and urban America in the availability, use and cost of wireless services. Approximately 80 percent of the U.S. population lives in metropolitan areas. However, our society is increasingly mobile and, therefore, ubiquitous wireless service is essential, not only for those living in rural areas, but also for individuals whose business and leisure activities take them to all parts of the nation. Thus, it is in the larger public interest to promote seamless wireless service throughout the country. By the *Notice of Inquiry*, we seek to broaden our understanding of the effect our current policies have had on the availability of spectrum-based services in rural America and on access to spectrum licenses by rural telcos and other entities seeking to serve rural areas. Further, we are interested in exploring whether it is appropriate to adopt new approaches in these areas. We therefore seek comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to areas that traditionally may have been underserved by telecommunications providers and on our efforts to provide rural telcos with the opportunity to participate in spectrum auctions. We also invite comment on ways in which the Commission could modify its policies to best fulfill these statutory goals.

12. At the outset, we request comment on the types of wireless services that are currently provided, and that are planned to be offered, in rural areas. We seek information on the availability of wireless services in rural areas and the providers of such services. We ask commenters to identify which service providers, in addition to rural telcos, are providing wireless services to rural populations. To the extent possible, we request that commenters provide particularized data on wireless coverage and provision of services to rural areas. The more specific data we receive, the better able we will be to tailor our regulations to meet our rural service goals. We particularly seek comment from consumer groups, community groups, State Commissions, local governments and others about any geographic areas that lack adequate wireless coverage, have inadequate quality of service, or inequitable pricing. We also ask commenters to identify the obstacles to providing wireless service in rural areas. In particular, we ask commenters to address the economic viability of building out in rural areas. In what ways, if any, can the Commission modify its rules to promote build-out to rural regions? We also seek comment on whether we should maintain a Web site that would include information that would be helpful to entities seeking to provide wireless services to rural areas. Such a Web site, for instance, could have links to other sites that contain information about programs and financial incentives that are available to those seeking to serve rural populations. Should we maintain a database that would provide information to prospective service providers, including rural carriers, on the availability of spectrum for initial licensing or leasing? In addition to the specific issues identified in the *Notice of Inquiry*, we also invite comment on any other issues within the Commission's jurisdiction that may directly relate to the provision of wireless service in rural areas.

13. Apart from the rural service mandate set forth in section 309(j), Congress also directed the Commission to pursue other public interest objectives in designing a system of competitive bidding, including the efficient and intensive use of the spectrum, the development and rapid deployment of new technologies and services, the promotion of competition, and the recovery for the public of a portion of the value of the spectrum. In providing comment on how the Commission may best fulfill the rural objectives, we ask that commenters also address how any proposed suggestions would further, or impede, the Commission's achievement of the other public interest goals set forth in section 309(j)(3).

14. Finally, we recognize that issues involving spectrum leasing opportunities are of significant interest to rural telcos. They have expressed interest in gaining access to spectrum usage rights through secondary markets. We plan to address these matters in our proceeding on secondary markets.

15. In addition, we note that rural interests have raised issues related to the controlling interest standard that the Commission adopted in the *Part 1 Fifth Report and Order*. In essence, they argue that application of this rule will inappropriately disqualify rural telco cooperative applicants from attaining small business bidding status and will frustrate the objectives of the Commission's small business bidding preference program and the mandates of section 309(j). Because we will respond to petitions for reconsideration of the *Part 1 Fifth Report and Order* in a subsequent order, as part of the Part 1 rulemaking proceeding, we do not seek comment on, and will not address these matters in the *Notice of Inquiry.*

A. Definition of ''Rural Areas''

16. As discussed, sections 309(j)(3) and 309(j)(4) direct the Commission to promote the development and deployment of spectrum-based services to ''rural areas.'' The statute, however, does not provide a definition of what constitutes a ''rural area.'' The federal government has multiple ways of defining ''rural,'' reflecting the multiple purposes for which the definitions are used. The Commission has used RSAs to define ''rural'' in certain instances. In the *Seventh Report*, 17 FCC Rcd 12985 (2002), the Commission used three different proxy definitions of ''rural'' for purposes of analyzing the average number of competitors in rural versus non-rural counties. We compared the number of competitors in (i) RSA counties versus MSA counties, (ii) non-nodal EA counties versus nodal EA counties, and (iii) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile. We request comment on whether and how the Commission should define ''rural area'' for purposes of determining the extent to which the Commission has met its mandate under section 309(j). In addition, we seek comment on whether we should adopt different definitions of what constitutes a ''rural area'' depending upon the regulatory initiative for which the definition is used. Commenters should identify the factors that the Commission should consider when defining ''rural area.'' In addition, we are interested in compiling a comprehensive list of the number of telephone companies that meet the definition of ''rural telephone company'' as defined in 47 U.S.C. 153(37). The identical definition is also included in 47 CFR 1.2110(c)(4) and 51.5. We ask that commenters provide data to assist us in this effort.

B. Bidding Credits

17. As explained, bidding credits are intended to foster broad participation in the competitive bidding process for licenses. A bidding credit reduces the amount of the winning bid paid for a license by a qualifying entity. The Commission requests comment on whether, and the extent to which, small business bidding credits have facilitated the participation of rural telcos in competitive bidding and the delivery of spectrum-based services to rural areas. Our research demonstrates that rural telcos often qualify as small businesses and are therefore eligible to receive small business bidding credits. Is the availability of small business bidding credits effective in assisting rural telcos to gain access to spectrum? Is the availability of such credits helpful in promoting the provision of spectrum-based services to rural areas? Commenters should support their responses to these questions with data or other empirical information. For instance, if commenters contend that small business bidding credits are not helpful in promoting rural telco participation in Commission auctions, commenters should provide data or statistics supporting that assertion. If empirical evidence demonstrates that small business bidding credits are not effective in facilitating the provision of wireless services to rural areas or the participation of rural telcos in competitive bidding, should the Commission adopt a bidding credit specifically for rural telcos or based on the provision of service to rural areas? For instance, should the Commission adopt a rural service bidding credit modeled after the tribal lands bidding credit? In responding to these questions, commenters should discuss why the use of small business bidding credits is or is not effective in creating opportunities for rural telcos or in spurring the provision of services to rural areas.

18. If the Commission were to adopt a bidding credit specifically for rural telcos, what criteria should it use to determine eligibility for the credit (if it is not based on financial size) and what should be the size of the credit? Is it appropriate, for instance, to adopt a bidding credit for all rural telcos irrespective of how large or well-financed these entities may be? When initially considering the adoption of a rural telco bidding credit in 1994, the Commission found that rural telcos do not *per se* have the same difficulty accessing capital as other groups, such as small businesses. The Commission stated that the parties advocating the adoption of a rural telco credit had ''failed to demonstrate a historical lack of access to capital that was the basis for according bidding credits to small businesses, minorities and women.'' In subsequent decisions, the Commission has reiterated that large rural telcos do not appear to have barriers to capital formation similar to those faced by other designated entities. In commenting on this issue, parties that advocate the adoption of a bidding credit specifically for rural telcos should address whether we should consider access to capital as a factor in determining whether to adopt such a bidding credit. We note that rural telcos may seek below-market rate lending through the Department of Agriculture's Rural Utilities Service (''RUS''). In addition, section 6103 of the recently-enacted Farm Security and Rural Investment Act of 2002 provides loans and loan guarantees to construct, improve, and acquire facilities and equipment to provide broadband service to rural communities with 20,000 or fewer residents. These financing options suggest that rural telcos may have greater ability than other designated entities to attract capital. We seek comment on what role these programs should play, if any, in our consideration of adopting an independent rural telco bidding credit.

C. Geographic Service Areas

19. The sizes of geographic service areas vary on a service-by-service basis depending upon such factors as the nature of the service and the likely users. We seek comment on the extent to which the size of the geographic service area affects the ability of rural telcos to acquire spectrum licenses through competitive bidding. In addition, commenters should discuss whether, and in what ways, the size of the geographic service area affects the provision of wireless services to rural areas. Commenters should provide data to support their positions.

20. Does the size of the geographic service area affect the provision of wireless services to rural areas by entities other than rural telcos? Large license areas, for instance, may enable nationwide carriers to compete with local or regional carriers in providing service to rural areas. Such large areas may also provide opportunities for new entrants to compete on a wide-area basis in an existing service. With regard to commercial mobile telephony specifically, there is considerable industry support for the notion that relatively large licenses are most efficient. The original geographic scope of cellular, broadband PCS, and certain SMR licenses was small and, as a result, the licenses were assigned to a large number of entities. The predominant trend since then, however, has been for operators progressively to aggregate licenses and build large geographic footprints. The Commission has found that these footprint-expanding transfers and assignments result in important public benefits. Today, six providers approach nationwide status. However, less than 50 percent of the geographic area of the country is served by three or more carriers. Given this evidence, are small license areas inefficient for licenses of spectrum suitable for provision of mobile voice and data service? And for such licenses, do the interests of consumers of rural service diverge from the interests of rural telcos that wish to supply such service?

Alternatively, does the use of small geographic licensing areas stimulate competition in the provision of wireless services to rural populations? Does the adoption of smaller service areas enable rural telcos to compete more effectively in spectrum auctions? If rural telcos win licenses covering small geographic service areas, are they more likely to provide services to those areas than are other service providers? Is there evidence that smaller geographic areas will result in more rapid deployment of services? Are rural carriers better positioned to serve the needs of rural America than nationwide carriers? Reliance on nationwide licenses assumes that nationwide carriers and local carriers are equally well positioned to serve rural consumer needs. Is this correct? On the other hand, are rural populations better served by carriers that operate on a nationwide basis as opposed to local carriers? For example, are nationwide carriers better able to offer lower prices, better roaming capability, or more services due to economies of scale? If the adoption of smaller service areas for licenses does enhance the participation and success of rural telcos in competitive bidding and/or the provision of services to rural areas, should the Commission adopt varied-sized or small-sized geographic service areas for all auctionable services? Are there particular services that are more appropriate for licensing by smaller geographic areas? If smaller geographic service areas promote competition, service, and access to spectrum by rural telcos, what size service areas would be most effective to achieve these benefits? In addition, we seek comment on whether certain auction designs, such as combinatorial or ''package'' bidding, facilitate license configurations that are efficient and likely to foster the provision of wireless services to rural areas.

D. Partitioning and Disaggregation

21. Partitioning and disaggregation policies and regulations are designed to facilitate more efficient and intensive use of the spectrum, including use by rural telcos to serve rural areas. In paragraph eight, we provide statistics regarding partition and disaggregation assignees that have identified themselves as rural telcos, and assignees that claim that they are or will be serving rural areas. However, because we do not require applicants to identify themselves as rural telcos when applying for licenses, we cannot with certainty determine the extent of transactions involving rural telcos based solely on our licensing records. Therefore, we seek comment on the extent to which rural telcos have received licenses through geographic partitioning and spectrum disaggregation. We are interested in learning whether, and in what ways, partitioning and disaggregation policies have been helpful in providing rural telcos with access to spectrum. We also ask for comment on whether, and to what extent, partitioning and disaggregation rules have enhanced the provision of services to rural areas. In responding to these questions, commenters should provide data or other empirical information to support their positions. We also solicit comment on whether partitioning and disaggregation policies enhance competition in the provision of wireless services to rural areas. If partitioning and disaggregation facilitate the provision of services to rural areas, do sufficient incentives exist for both winning bidders and prospective licensees to participate in the spectrum partitioning and disaggregation process? For instance, to what extent do the potential transaction costs involved in partitioning and disaggregation discourage licensees from pursuing such options? We note that some rural interests maintain that such transaction costs and other factors lead licensees to avoid pursuing partitioning and disaggregation agreements. If sufficient incentives do not exist to encourage partitioning of service areas and disaggregation of spectrum, should the Commission adopt additional incentives to motivate parties to pursue these options? For example, should the Commission require that licensees disaggregate or partition under certain circumstances, such as when there is unused spectrum or unserved portions of geographic service areas?

E. Performance Requirements

22. Performance requirements, such as construction benchmarks, are intended to help ensure that licensees promptly provide service to potential subscribers. The type of construction benchmark the Commission adopts for a license may determine whether services are deployed expeditiously to rural areas. For instance, depending on the level at which it is set, a population-based requirement may be achievable by a licensee providing service only to the urban areas covered by its license. In contrast, a geography-based benchmark targets the delivery of services to a percentage of a geographic area, rather than to a percentage of the population in an area. Because population is only rarely distributed uniformly across a geographic area, the same percentage requirement under a geography-based standard may result in greater geographic area and population coverage than that percentage under a population-based requirement.

23. We seek comment on whether and how construction benchmarks may be utilized to encourage licensees to deliver wireless services to rural populations. To what extent are our current construction benchmarks effective in ensuring that spectrum-based services are provided to rural areas? In what instances, and under what circumstances, should the Commission adopt a population-based, geography-based, or substantial service construction benchmark? For example, in licensing service areas that are predominantly rural, should the Commission adopt geography-based construction benchmarks? Are there other types of construction benchmarks that would better promote service to rural regions? For instance, should we adopt a separate construction benchmark applicable only to service areas that constitute rural areas? Alternatively, should we revise our current construction benchmarks to permit service providers to serve either smaller portions of the population or service area if they meet a second construction benchmark applicable to the rural portions of a licensee's market? If so, commenters should explain what construction benchmarks we should adopt for the rural portions of the service area? If, as suggested, we were to require licensees to disaggregate or partition unused spectrum or unserved portions of geographic service areas, should the Commission adopt additional construction benchmarks to implement this requirement? If so, what penalties should the Commission impose on licensees for failure to timely meet such additional construction benchmarks? As noted, the Commission has generally accepted certifications of CMRS carriers that they have met their construction benchmarks. To what extent are our self-certification procedures an adequate means of ensuring compliance with our construction benchmark requirements?

24. In addition to employing varying types of construction benchmarks for auctioned licenses, the Commission has also utilized different models with respect to enforcing construction requirements. In the Cellular Radiotelephone Service, initial licensees are given five years to construct facilities and begin providing service to their market. At the end of the initial five-year period the licensee is allowed to ''keep what it builds'' and the remaining portions of the market

become available for licensing to other parties via the cellular ''unserved area'' licensing process. In contrast, auctioned services such as broadband PCS provide for an ''all or nothing'' penalty for failing to meet the construction benchmarks, *i.e.*, if a licensee does not meet the five- or ten-year benchmark or make a showing of substantial service (where applicable) it forfeits the entire license and does not get to ''keep what it builds.'' With this past experience in mind, we seek comment on whether these models, a hybrid model, or some combination of targeted models, may be utilized to facilitate service in rural areas. We also seek comment on whether the Commission should adopt performance requirements other than construction benchmarks to encourage the provision of wireless services to rural areas.

25. For unserved areas in the Cellular Radiotelephone Service, should the Commission adopt a different approach to assigning spectrum usage rights? Specifically, should the Commission adopt a ''commons'' model, which allows unlimited numbers of unlicensed users to share frequencies, with usage rights that are governed by technical standards but with no right to protection from interference? In addition, should the Commission amend the application filing process for cellular unserved areas to further encourage service providers to operate in rural areas? Furthermore, should the Commission apply the policy it has adopted with respect to unserved areas in the Cellular Radiotelephone Service to other services to promote wireless service in rural areas, *i.e.*, allow licensees to continue to serve the areas they have built-out, but make available for licensing to other parties those portions of a market that are not being served by current licensees? With respect to our ownership rules for the Cellular Radiotelephone Service, we seek comment on whether and to what extent our retention of the cellular cross-interest rule for RSAs advances spectrum-based services to rural areas. Should the Commission amend this rule to further the provision of wireless services to rural areas?

26. Finally, it may be economically inefficient, and thus harmful to customers, to require for each wireless service the same number of competitors in urban and rural areas. This appears to be true, for example, with regard to mobile telephony. How should a performance requirement policy for rural areas address this issue? Economic theory predicts that where licensees are in competitive markets, and no market failures exist and transactions costs are sufficiently low, market forces will drive optimal decisions on what is built, where, and when. In that setting, build-out rules arguably would distort resource allocation, or at best be irrelevant. We ask parties to comment on the application of this economic theory to construction benchmarks that cover rural areas. In particular, for those services and rural markets where there is competition, how should we balance the putative efficiency harm of build-out rules against the potential equity benefit? Moreover, for those services and rural markets where there is a lack of competition, *e.g.*, as a result of small market size not being able to support multiple operators, is it possible that build-out rules would impose efficiency costs in the form of spending on excess capacity?

F. Band Manager Licensing

27. A band manager is a licensee that is specifically authorized to lease its licensed spectrum usage rights for use by third parties through private contractual agreements without having to seek prior Commission approval. Band managers may make their licensed spectrum available to facilitate all types of spectrum use that are consistent with the technical restrictions adopted for the particular band and in accordance with certain requirements imposed on the leasing relationship. The Commission has adopted band manager licensing for several bands. The band manager may subdivide its spectrum in any manner it chooses and make it available to any third party, consistent with the frequency coordination and interference rules specified for the particular band. Band managers are permitted to apportion spectrum based on both geographic area and frequency. Such spectrum apportionment differs from traditional geographic partitioning and spectrum disaggregation because it does not involve the transfer or assignment of the band manager's licenses to other parties. Band manager licensing is an innovative spectrum management approach that can enable parties to acquire spectrum more readily for varied uses. The band manager option will also enable small businesses to acquire spectrum in amounts to serve particular geographic areas, and for periods of time, that better suit their unique characteristics and specialized communications needs. We seek comment on whether rural telcos would be able to obtain more affordable access to spectrum through a band manager than by acquiring licenses directly at auction or through partitioning and disaggregation. We also seek comment on whether rural telcos would be more likely to obtain access to spectrum that is tailored to their particular needs from a band manager than by acquiring licenses in an auction or through partitioning and disaggregation. Comments should also discuss whether band manager licensing would promote service or enhance the quality of service to rural areas.

G. Technical and Operational Rules

28. The Commission has developed technical and operational rules throughout its spectrum-based services in order to facilitate efficient use of the radio spectrum while minimizing the potential for harmful interference among licensees. We seek comment on the degree of flexibility that these regulations afford to providers of spectrum-based services in rural areas. Are there aspects of these rules that could be modified or made more flexible to encourage expanded service to rural areas while ensuring that services remain free of harmful interference? For example, would increasing permissible power levels be beneficial for particular types of services in areas where there is less spectrum congestion? Commenters should explain how their proposed changes would satisfy the goal of expanded rural service while not increasing the likelihood of harmful interference to existing licensees.

29. With respect to the Rural Radiotelephone Service, which includes BETRS, we note that as of November 2002, there were 67 active BETRS licenses with facilities in 17 states and 580 active Rural Radiotelephone licenses with facilities relatively uniformly spread throughout the continental United States. Of these, only one BETRS and two Rural Radiotelephone licenses were issued within the last two years. We seek comment on how we might revise the rules for these services to further facilitate the provision of wireless service to rural areas.

H. Unlicensed Spectrum

30. We also seek comment on the extent to which unlicensed spectrum is being used to provide wireless services to rural communities. We ask commenters to identify the service providers that are utilizing unlicensed spectrum and the types of services they are offering. Further, we seek comment regarding actions the Commission could take to encourage or facilitate the use of unlicensed spectrum. For example, unlicensed operation is generally limited to very low power levels in order to help ensure that the operation does not interfere with licensed services. However, the interference

potential of unlicensed devices may be low or negligible in rural communities. Should unlicensed devices be permitted to use higher output power levels in such environments? If so, what criteria would have to be met in order to qualify to use the higher power levels?

I. Eligible Telecommunications Carriers

31. The Commission's rules concerning universal service support for eligible telecommunications carriers (''ETCs'') may impact deployment of wireless services to rural areas. Under the Communications Act, only carriers designated as ETCs under section 214(e) may receive federal universal service support. Under the Commission's rules, wireless carriers may be designated as ETCs and may receive universal service support for providing service to consumers that use wireless service as their only phone service as well as to consumers that also maintain wireline service. The Commission recently asked the Federal-State Joint Board on Universal Service (Joint Board) to review the ETC rules and provide recommendations regarding if and how these rules should be modified. We anticipate that the Joint Board will develop information on the impact of the Commission's ETC rules on deployment of wireless services to rural areas. In this docket, we seek comment generally on whether the Commission's ETC rules have promoted deployment of wireless service to rural areas and greater subscribership in these areas. We also seek to gather factual information. Specifically, we direct the Universal Service Administrative Corporation to provide us with information on the number of wireless carriers currently designated as ETCs, the amount of federal universal service support they have received, and the number of lines they serve. We ask that commenters provide any information available on how many of the customers served by wireless carrier ETCs also maintain wireline phones. How many customers had no phone service whatsoever until they purchased wireless service?

IV. Procedural Issues

A. Ex Parte Presentations

32. This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Filing of Comments and Reply Comments

33. We invite comment on the issues and questions set forth. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 3, 2003, and reply comments on or before February 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Commenters that wish confidential treatment of their submissions should request that their submission, or specific part thereof, be withheld from public inspection.

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4–B551, 445 12th Street, SW., Washington, DC 20554.

V. Ordering Clauses

35. Accordingly, it is ordered that, pursuant to the authority contained in 47 U.S.C. 151, 4(i), and 303(r) the *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–219 Filed 1–6–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 02–379; FCC 02–327]

Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document solicits data and information on the status of competition in the CMRS industry for our Eighth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services (''Eighth Report''). The Eighth Report will provide an assessment of the current state of competition and changes in the CMRS competitive environment.

DATES: Comments are due on or before January 27, 2003 and reply comments are due on or before February 11, 2003.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Chelsea Fallon, Federal Communications Commission, Room 4–A335, 445 12th Street, SW., Washington, DC 20554. See ''Supplementary Information'' for comment and reply comment filing instructions.

FOR FURTHER INFORMATION CONTACT: Chelsea Fallon at (202) 418–7991.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Inquiry* released on December 13, 2002. The complete text of the *Notice of Inquiry* is

available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Notice of Inquiry* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Introduction

1. In 1993, Congress created the statutory classification of Commercial Mobile Services to promote the consistent regulation of similar mobile radio services. At the same time, Congress established the promotion of competition as a fundamental goal for CMRS policy formation and regulation. To measure progress toward this goal, Congress required the Federal Communications Commission (''Commission'' or ''FCC'') to submit annual reports that analyze competitive conditions in the industry. The *Notice of Inquiry* solicits data and information on the status of competition in the CMRS industry for our Eighth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services (''Eighth Report''). The Eighth Report will provide an assessment of the current state of competition and changes in the competitive environment since the release of the *Seventh Report*, 17 FCC Rcd 12985 (2002).

2. The *Notice of Inquiry* is part of the Commission's ongoing effort to improve its *CMRS Report*s. In February 2002, the Commission held a Public Forum to examine ways in which to better gather and analyze data for the *Seventh Report*, in particular data regarding the development of CMRS services in rural and underserved areas. As a result of the forum, the Commission was able to integrate new data into the *Seventh Report* and adopted a number of suggestions made by forum participants on how to obtain and analyze data more effectively.

3. Commercial mobile telephone and mobile data services are provided by a large number of terrestrial CMRS operators as well as mobile satellite operators. In an effort to provide the most complete picture of competition to Congress, the *CMRS Reports* analyze CMRS services from a consumer point of view. Therefore, some portions of our analysis include offerings outside the umbrella of ''services'' specifically designated as CMRS by the Commission. Because providers of these services may, on some level, compete with CMRS providers, the Commission believes it is important to consider them in its analysis and collects information on specific product categories regardless of their regulatory classification.

4. In the *Notice of Inquiry*, we seek information that can be used to examine the status of competition in the CMRS industry. We note in our ongoing process of improving our data gathering process that we have taken the step of issuing the *Notice of Inquiry* in an effort to gather more detailed, comprehensive, and independent data for this year's report. We request data that will allow us to evaluate the extent to which consumers can choose among CMRS operators, services, and technologies. In particular, we seek the following data and ask commenters to address the following general questions:

- What is the current structure of the CMRS industry?
- Which entities compete to provide CMRS services?
- What have been the most significant changes or developments in the industry over the past year?
- What is the extent of deployment of CMRS services?
- What is the state of competition in the provision of CMRS services?
- How does competition in the CMRS marketplace vary across the United States, in particular between rural and urban areas?
- What metrics are available that will give us insight into the level of competition in the provision of CMRS services? We are interested in, but not limiting commenters to, information on service availability, the number of subscribers, penetration rates, usage, average revenue per subscriber, churn, quality of service, pricing data and trends, and profits.
- To what extent do key metrics, such subscribership and usage levels, vary among different demographic groups?
- How does CMRS providers' cost of capital affect service availability, including entry into new geographic markets, the quality of service, and the introduction of new services? How is the cost of capital related to the level of competition in the provision of CMRS services? Is it possible to track the cost of capital that different CMRS providers have faced and will continue to face over time?
- How does competition in the CMRS industry in the United States compare to that in other countries? How do key CMRS industry performance metrics, such as subscribership, usage, pricing, quality of service, and service availability, vary between the United States and other countries?

5. Industry members, interested parties, and members of the public should submit information, comments, and analyses regarding competition in the provision of CMRS services. Commenters that wish confidential treatment of their submissions should request that their submission, or a specific part thereof, be withheld from public inspection. In order to facilitate our analysis of competitive trends over time, we request that parties submit current data as well as data that are comparable over time. In addition to the comments submitted in this proceeding, the Eighth Report will also include information from publicly-available and FCC sources.

II. Matters on Which Comment Is Requested

A. Competition in the Mobile Telephone Sector

i. Introduction

6. For purposes of the *CMRS Reports*, the mobile telephone sector is defined to include all operators that offer commercially available, interconnected mobile voice services. These operators provide access to the public switched telephone network (''PSTN'') via mobile communication devices employing radiowave technology to transmit calls. The mobile telephone sector is dominated by providers using cellular radiotelephone, broadband Personal Communications Service (''broadband PCS''), and Specialized Mobile Radio (''SMR'') licenses. Because these licensees offer mobile telephone services that are essentially interchangeable from the perspective of most consumers, they have been discussed in the *CMRS Reports* and are discussed in the *Notice of Inquiry* as a cohesive industry sector.

7. For purposes of the Eighth Report, we seek information on significant trends and developments that have occurred in the mobile telephone sector since the publication of the *Seventh Report.* Historically, the *CMRS Reports* have looked at the extent of service availability as well as the number of consumers using mobile telephone services. In addition, the *CMRS Reports* have looked at minutes of use, average revenue per unit, churn levels, and pricing trends as indicators of competition.

ii. Service Availability

8. The *CMRS Reports* include an analysis of the availability of commercial mobile telephone service that the Commission uses to evaluate competition in the U.S. mobile telephone industry. This analysis has

heretofore been based on publicly available information released by operators, such as news releases, Securities and Exchange Commission (''SEC'') filings, coverage maps available on operators' web sites, and network buildout notifications filed with the Commission. The statistics presented in the *CMRS Reports* based on this information include the number of providers operating in a given geographic area, the percent of the population living in areas with a certain number of competitors, and the extent of coverage of the various network technologies (*e.g.*, analog, CDMA, TDMA, GSM, and iDEN). In the *Third and Fourth Reports,* the geographic area used as the basis for these analyses was Basic Trading Areas (''BTAs''); however, the subsequent *CMRS Reports* have been improved and present this information on a more disaggregated, county-by-county basis.

9. Previous *CMRS Reports* have included several notable caveats about our analysis of the service availability. First, to be considered as ''covering'' a county, an operator need only be offering any service in a portion of that county. Second, multiple operators shown as covering the same county are not necessarily providing service to the same portion of that county. Consequently, some of the counties included in this analysis may have limited coverage from a particular provider. Third, the figures for POPs and land area in this analysis include all of the POPs and every square mile in a county considered to have coverage. Therefore, this analysis overstates to some degree both the level of competition and total coverage in terms of both geographic area and population covered. On the other hand, while newer broadband PCS and SMR licensees have less complete networks that may be overstated in our analysis, the original cellular licensees have extensive networks that provide almost complete coverage of the entire land mass of their license areas, and hence the entire land area of the continental United States.

10. We ask for comment on how to improve the methodology we use to determine service availability and evaluate competition. As described, the methodology inherently includes some undetermined degree of overcounting. Do commenters believe that this degree of overcounting is significant and materially affects the determination of mobile telephone service availability and competition? Is there an alternate methodology that could be used to determine service availability and competition?

11. In order to improve the accuracy of our analysis and to reduce overcounting in the Eighth Report, we ask service providers to submit as part of their comments to the Commission, in electronic format, the coverage maps that they already make available to the public. Specifically, we request carriers submit as part of their comments the maps they employ to advertise their coverage areas in brochures and on their web sites in a geo-referenced, mapable format, such as MapInfo table (.tab) or Tagged Image Format (.TIF) files, on a CD sent to the Commission. The Commission has used the contours filed by 800 MHz cellular licensees to determine the availability of analog mobile telephone service, and therefore does not require additional maps showing analog coverage from cellular licensees. However, the Commission requests that cellular licensees submit as part of their comments their publicly-available maps in the aforementioned format showing where they offer reliable digital service. In addition to the coverage maps that carriers make available to the public, do carriers have maps with more detailed coverage information that are not available to the public? In the alternative, we ask carriers to please indicate in their comments if they do not have such maps. Would carriers or other parties be willing to submit such maps as part of their comments?

12. Moreover, carrier provision of their publicly-available coverage maps in electronic, geo-referenced format with clearly-defined boundary lines, would enable the Commission to examine more precisely the smaller geographic areas underlying the coverage boundaries, such as zip code areas or census block groups. These small geographic areas could therefore allow the Commission to make more accurate estimates of the population and land area covered by a certain number of carriers or served by a digital network.

13. In conducting our analysis of service availability and competition, we seek information about the extent to which consumers are able to, and do, purchase service plans from carriers whose networks do not cover their residential location or billing address. Carriers frequently query potential subscribers about the zip code of their billing address. Should this be taken as an indication that carriers do not provide service to consumers whose billing address zip codes are outside the range of the carriers' network coverage areas, even if such consumers wish to purchase service plans in order use their phones inside the coverage areas? To what extent are mobile telephone subscribers' residential locations or billing addresses located outside of their carrier's network coverage area? To what degree would an analysis of the population of smaller geographic areas that underlie carriers' network coverage boundaries undercount those subscribers? Furthermore, would the use of other, smaller geographic areas in addition to or in place of counties be appropriate in analyzing service availability? If so, which areas would be appropriate? Do data currently exist on this basis?

14. In order to continue to improve the accuracy of our analysis, we seek information on whether carriers market service to new customers in all of the geographic areas in which they have coverage. Do carriers provide coverage in certain areas, such as near major roads, where they do not also market service to residents? If the latter is true, our analysis could be further improved if carriers indicated the parts of their coverage areas in which they compete to offer new service and the parts that are used only to provide coverage to traveling subscribers based in other locations. In addition to employing more accurate coverage maps, in what other ways could our analysis of service availability be improved?

15. We also seek data on the relationship between competition and the availability of roaming for wireless customers. To what extent do carriers have agreements that enable their customers to use automatic roaming throughout the United States? Are there geographic areas in which some carriers do not have automatic roaming agreements? If so, where are those areas and is there any correlation to the number of wireless providers operating in those areas? Are rural customers more affected than non-rural customers? How many customers use manual roaming? Where are those customers located when they use manual roaming, and how frequent is their usage?

16. Finally, we seek comment on the fact that our service availability analysis relies on information reported by service providers, including their news releases, filings with the SEC, Web site coverage maps, and network buildout notifications filed with the Commission. In addition, there are independent web sites and public reports that include some information about service coverage and dead zones. There are risks to relying exclusively on data supplied by parties with a financial stake in the use of such data as part of Commission decisions. Since we, in some cases, report on information supplied only by one or two sources, we

also seek comment on ways of obtaining independent verification of competition information provided for the report. Which independent sources can be reliably used to verify carrier-supplied coverage information? Do commenters believe such verification is necessary in analyzing service availability and competition?

17. In addition to analyzing service availability by all facilities-based mobile telephone carriers, previous *CMRS Reports* have discussed ''nationwide'' mobile telephone operators. Companies that analysts typically describe as being nationwide offer service in at least some part of the western, midwestern, and eastern United States. This label does not necessarily mean that the operator's license areas, service areas, or pricing plans cover the entire land area of the United States. The *Seventh Report* listed six carriers that analysts typically describe as nationwide mobile telephone operators, all of which, with their affiliates and partnerships, have licenses covering between 230 and 285 million people. We seek comment on whether it is appropriate to call these similarly situated operators ''nationwide'' mobile telephone operators. Is there other terminology that would better describe the carriers that have a relatively large number of licensed POPs and provide coverage in multiple large regions of the United States?

iii. Market Performance and Key Metrics

18. The *CMRS Reports* have looked at a series of key metrics as indicators of the demand for and reliance on mobile telephone service. Examples of key metrics employed in the past include the number of subscribers and penetration rates, average minutes of use per subscriber per month (''MOUs''), average revenue per unit, and churn. In addition, the *CMRS Reports* look at the prices for mobile telephone services, including new developments in pricing plans; the extent of digital service; and wireless-wireline competition. The sources of data and analysis of these metrics are discussed. Are there other metrics or techniques that should be used to analyze competition in the mobile telephone sector? Are metrics available on a national and/or sub-national level? What types of conclusions can and cannot be drawn from the current and recommended metrics? For example, is service quality related to competition? How would the Commission measure service quality?

(a) Subscribership

19. One of the key metrics that provides an indication of the demand for mobile telephone service is the total number of subscribers. Prior to the *Seventh Report,* the Commission relied on estimated national subscribership data from a semi-annual survey, started in 1985, conducted by the Cellular Telecommunications and Internet Association (''CTIA''). Beginning with the *Seventh Report,* however, the Commission was able to estimate the number of U.S. subscribers using information filed directly with the FCC. This information, the Numbering Report Utilization / Forecast (''NRUF'') data, tracks phone number usage in the United States. All mobile telephone carriers must report to the FCC which of their phone numbers they have assigned to end users, thereby permitting the Commission to make an accurate estimate of the total number of mobile telephone subscribers. As stated in the *Seventh Report,* the Commission used NRUF data to estimate that there were 128.5 million subscribers in the United States as of December 31, 2001. The CTIA estimate for the same time was 128.4 million subscribers.

20. We seek comment on the use of NRUF data to estimate the total number of U.S. mobile telephone subscribers. We also seek comment on the continued use of CTIA's estimate from its semi-annual survey. Furthermore, we request information from commenters on other data sources that are available to determine the number of U.S. mobile telephone subscribers and whether parties are willing to provide the data. In addition, we request subscribership data that would assist in a greater understanding of the competitive landscape, such as penetration rates by age cohorts or household penetration rates.

21. The Commission also collects subscribership data as part of the local competition and broadband data gathering program. Mobile telephone carriers with more than 10,000 facility-based subscribers in a state are required to report their number of subscribers in those states twice a year to the Commission. Using this data, the Commission reported that mobile telephone carriers had 122.4 million U.S. subscribers as of December 31, 2001. For purposes of the Eighth Report, we seek comment on whether this data should be used to draw any conclusions about the mobile telephone sector, or whether it undercounts subscribership to such a degree that it should not be employed for such purposes.

22. NRUF data is submitted to the Commission on a rate center basis. Rate center boundaries have in large part been determined by incumbent local exchange carriers for their own network management purposes. Because rate center boundaries are relatively small, the NRUF data allows the Commission to make sub-national or regional estimates of mobile telephone subscribership and penetration. However, there are a number of disadvantages associated with using NRUF data for this purpose. First, because CMRS carriers have wide latitude in choosing to which rate center to assign a phone number across a large geographic area, rate center boundaries are not necessarily indicative of where a phone number assignee, and hence a mobile telephone subscriber, lives, works, or uses her phone. In addition, rate center boundaries are not coterminous with other boundaries frequently used in mobile telephone analyses, such as counties, Cellular Market Areas (''CMAs''), or BTAs. Furthermore, in order to protect the confidentiality of the companies submitting NRUF data, the Commission does not report the number of subscribers for geographic areas in which there are three or fewer carriers.

23. For purposes of the *Seventh Report,* the Commission chose to use Economic Areas (''EAs'') as the geographic unit for its sub-national subscribership analysis using NRUF data, in part because it minimized many of NRUF's drawbacks, discussed. EAs, which are defined by the Department of Commerce, consist of one or more economic nodes and the surrounding areas that are economically related to the node. One of the main factors in determining the economic relationship between the economic node(s) and the surrounding areas is commuting patterns, so that each EA includes, as far as possible, the place of work and the place of residence of its labor force. Because EAs are large enough to include many rate centers and because they attempt to capture both the rate centers in which subscribers have their numbers assigned and the larger area in which they use their phones, an EA-based analysis minimizes the pitfalls of the NRUF data while still providing useful sub-national penetration information.

24. We ask for comment on how to determine which geographic area or areas should be used, for purposes of the Eighth Report, to calculate mobile telephone subscribership and penetration rates. We request opinions on the appropriateness of using EAs for such calculations. Would other geographic areas be appropriate to use in place of or in addition to EAs, such as states, Major Trading Areas (''MTAs''), BTAs, CMAs, or counties, noting the caveats of the NRUF data

discussed? In addition, are there other ways to interpret existing national and sub-national subscribership data for purposes of the Eighth Report?

(b) Minutes of Use

25. To analyze mobile telephone usage, the Commission has used MOUs as a key metric in the previous *CMRS Reports.* The *Seventh Report* includes MOU estimates from CTIA, Paul Kagan and Associates, and J.D. Power & Associates. All of these sources showed MOUs increasing substantially during 2001. We seek comment on the use of MOUs as an indicator of the demand for mobile telephone services as well as of the level of competition in the mobile telephone sector. For purposes of the Eighth Report, we ask for comment on the sources of the MOU data presented in the *Seventh Report* and request additional MOU data. In addition, should the Commission perform other analyses or draw additional conclusions from new or existing data?

26. All of the MOU sources presented in the *Seventh Report* estimate MOUs on a national basis. In order to increase the granularity of our analysis for the Eighth Report, we request data on MOUs on a sub-national basis and/or broken down by various demographic groups.

(c) Average Revenue Per Unit

27. Average monthly revenue per subscriber, often referred to as average revenue per unit or ''ARPU'', is another key metric presented in the *CMRS Reports.* One source of this metric is the industry-wide ARPU figure reported by CTIA in its semi-annual mobile telephone survey. In addition, many carriers report their individual ARPU figures periodically in their SEC filings. We seek comment on the use of ARPU as a metric in our analysis of the mobile telephone industry. Is ARPU a useful metric when analyzing competition? Is there a link between changes in ARPU and changes in competition? Is additional ARPU data available that should be considered, in particular data depicting whether and how ARPU varies by region and/or demographic group? Are there additional analyses that can be performed or conclusions that can be drawn in the Eighth Report from new or existing data?

28. CTIA reported that ARPU declined almost continuously from 1987 to 1999, going from a peak of $98.02 in December 1988 to a low of $39.43 in December 1998. However, since 1999, ARPU has been increasing, rising to $47.37 in December 2001. The *Seventh Report* concluded that the growth in ARPU might be the result of a variety of factors, including increased usage offsetting per-minute price declines, as well as the adoption of higher-priced monthly calling plans by consumers. We request from commenters additional input on the possible causes for the recent rise in ARPU, as well as additional data that may support various hypotheses. What role, if any, do changes in ARPU have on competition?

(d) Churn

29. Churn, a fourth key metric used in the *CMRS Reports,* refers to the number of customers an operator loses over a given period of time. The *Seventh Report* discussed churn estimates from Merrill Lynch, Salomon Smith Barney, and Telephia. Some of data included in these sources is reported by carriers, many of whom reveal their churn rates periodically in their SEC filings. Are there other sources of churn data available that should be included in the Eighth Report?

30. We seek comment on the use of churn rates as a tool in our analysis of the mobile telephone industry, including to what extent churn rates are a reflection of competition in this industry. We ask if there are additional analyses that can be performed or conclusions that can be drawn from churn data in the Eighth Report. Do commenters believe the churn data we have included in previous reports is reliable?

31. The Telephia data presented in the *Seventh Report* included estimates of churn for selected metropolitan areas including Chicago, Los Angeles, New York, San Francisco, and Washington D.C. To improve our analysis of the mobile telephone industry in the Eighth Report, we request additional sub-national or regional churn data, as well as churn data by demographic groups.

iv. Pricing Data and Trends

32. The *Seventh Report* contained pricing data from a series of sources, all of which indicated that the average price of mobile telephone service has been decreasing over time. The *Seventh Report* cited information from the U.S. Department of Labor's Bureau of Labor Statistics (''BLS''), Econ One, and trends based on CTIA data. Using CTIA data, we calculated a national average of revenue per minute (''RPM'') by dividing ARPU by MOUs. We used this RPM figure as an estimate of the average price per minute of mobile telephone service. RPM has been declining every year since 1995. BLS began reporting a cellular telephone component of the Consumer Price Index (''CPI'') in December 1997 (''cellular CPI''). The cellular CPI decreased 5.5 percent during 2001, and 32.8 percent between 1997 and 2001. The CPI, which includes the cellular CPI, represents approximately 87 percent of the U.S. population, and includes expenditure patterns of some of the rural populations. Do commenters believe the cellular CPI should be considered representative of national pricing trends? In contrast to our estimate of RPM and BLS's cellular CPI, which attempt to capture national pricing trends, Econ One analyzes pricing plans for the top 25 U.S. cities. The firm also calculates the average price of service across four different monthly usage levels and derives, from that data, an average for all users. Econ One found that the average price of service (across all usage levels and 25 cities) declined 7.3 percent during 2001, following a 6.9 percent decline in 2000.

33. We seek comment on the use of these various pricing estimates as a tool in our analysis of the mobile telephone industry, including to what extent price decreases are evidence of competition in the mobile telephone sector. We ask for feedback on the sources of the pricing data used in the *Seventh Report* and request additional national and sub-national pricing data for the Eighth Report. Are there additional analyses that can be performed or conclusions that can be drawn from new or existing pricing data?

34. The *CMRS Reports* have also examined new types of pricing plans introduced during the past year in order to report on major developments in the industry and to assess the new plans' impact on competition. To what extent do new types of pricing plans both reflect a competitive industry and stimulate competition among providers? What are the major innovations that have occurred with pricing plans since the *Seventh Report?*

35. We seek information on which carriers offer nationwide pricing plans, particularly those that are not typically described as being nationwide operators, and request descriptions of the terms of such plans. We ask carriers that offer nationwide pricing plans whether they offer the same rates and terms to consumers throughout all parts of the country where they offer such plans, including Alaska, Hawaii, and Puerto Rico. Furthermore, do carriers charge different prices—both monthly and per minute—or offer different terms for their local and regional plans across the various areas that they serve? If so, are these geographic variations substantial, and what are the major reasons for such variations?

36. Is pricing data available on whether certain types of pricing plans are associated with specific demographic cohorts or types of users? For example, do subscribers with lower personal or household incomes tend to purchase pricing plans with lower monthly fees? Are particular plans associated with teenagers or college students? Are prepaid services used by a group of consumers with similar characteristics? Have the introduction of new types of pricing plans increased mobile telephone penetration among specific demographic groups or in certain geographic areas?

v. Geographic Comparisons: Urban versus Rural

37. Since the release of the *Sixth Report,* the Commission has attempted to obtain a better understanding of the state of competition below the national level, in particular in rural areas. To begin with, we ask commenters to address whether an urban/rural distinction is meaningful in the context of mobile telephone service, given the varying types of geographic areas in which consumers use their mobile phones and carriers offer plans.

38. To the extent that it is meaningful to analyze mobile telephone service availability in rural areas, we seek comment on how best to determine whether competition has developed successfully in rural areas. We invite parties to comment on what data is available to address this issue and whether they believe there is meaningful competition among mobile telephone providers in rural areas.

39. The primary difficulty for the Commission in examining the state of competition in rural areas has been the lack of sub-national data. Prior to the release of the *Seventh Report,* the Commission held a Public Forum to gather more insights into and data about CMRS service availability in rural areas. Much of the information gathered was anecdotal. Therefore, additional data is needed, and we seek comment and information on three topics related to mobile telephone service availability in rural areas: (i) the definition of rural, (ii) service availability and network deployment, and (iii) market performance and key metrics.

40. Do services, pricing plans, and technologies differ between rural areas and urban areas? Do the providers who serve both areas offer the same products and prices in each type of area?

(a) Definition of Rural

41. In order to analyze mobile telephone service availability and competition in rural areas, it is necessary to first define what geographic area(s) constitutes ''rural.'' The federal government has multiple ways of defining rural, reflecting the multiple purposes for which the definitions are used. The Commission has used Rural Service Areas (''RSAs'') to define ''rural'' in certain instances. In the CMRS spectrum cap proceeding, the Commission designated RSAs as rural areas and stated, ''Other market designations used by the Commission for CMRS, such as [EAs], combine urbanized and rural areas, while MSAs and RSAs are defined expressly to distinguish between rural and urban areas.'' Since passage of the Telecommunications Act of 1996, the Commission generally has used the statutory definition to determine which local exchange carriers can be classified as rural telephone companies. That definition uses a range of standards including the population of a jurisdiction and the number of access lines serving communities of various sizes.

42. In the *Seventh Report,* we used three different proxy definitions of rural for purposes of analyzing the average number of competitors in rural versus non-rural counties. We compared the number competitors in (i) RSA counties versus MSA counties, (ii) non-nodal EA counties versus nodal EA counties, and (iii) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile.

43. We request comment on whether and how the Commission should define rural for purposes of the Eighth Report. What elements should the Commission consider when defining ''rural''? Should there be a single delineation between rural and non-rural areas, or should rural be defined on a continuum? For example, should the Eighth Report define different degrees of ''ruralness'' based on population density?

(b) Rural Service Availability

44. As mentioned, the Commission analyzed service availability in rural areas in the *Seventh Report* using three different proxy definitions for rural. The analysis resulted in similar results for each definition. Non-rural counties had an average of 5.5 to 5.7 service providers, while rural counties had an average of 3.1 to 3.3 competitors. We ask whether the existence of fewer facilities-based providers in rural areas necessarily indicates the existence of less meaningful competition in these areas.

45. When examining service availability in rural areas, should the Commission continue to use multiple definitions of rural for purposes of the Eighth Report? Were the three definitions employed in the *Seventh Report* appropriate proxies to use in assessing competition in rural areas? Are there other geographic definitions that should be employed in the Eighth Report? Is data available that would allow an analysis using other definitions?

46. In addition to addressing rural issues generally, we also take this opportunity to focus on access to telecommunications services by individuals living on tribal lands. In our *Report and Order* implementing auction bidding credits for those who commit to serving federally-recognized tribal lands, we noted that communities on tribal lands have had less access to telecommunications services than any other segment of the U.S. population. According to the 1990 Census, only 53 percent of those living on tribal lands had basic telephone service, as opposed to 94 percent for the United States as a whole. Further, a 1999 study commissioned by the U.S. Department of Commerce's Economic Development Administration found that the average penetration rate for basic telephone service on reservation and trust lands in rural areas was just 39 percent. Therefore, it may be appropriate to examine closely the state of telecommunications access not only in rural areas, but more specifically on tribal lands.

47. We seek comment on whether the Eighth Report should specifically address the state of mobile telephone competition on tribal lands. If so, what issues are present on tribal lands that warrant separate consideration from other rural areas with similar population levels? In examining services available on tribal lands, should we limit our consideration to services available to individuals who live within federally-recognized tribal lands, or should we also include other nearby areas where Native Americans may live? If so, we ask that commenters provide details regarding which areas should be included in our discussion, and provide information or information sources for obtaining sufficiently granular data about services in such areas.

(c) Rural Metrics

48. As discussed, the *CMRS Reports* have looked at key metrics as indicators of the demand for mobile telephone service and competition among mobile telephone providers. These metrics include the number of subscribers, MOUs, ARPU, churn, and pricing data. Historically, all of these metrics have

been presented on a national basis, although sub-national subscribership and pricing data were included in the *Seventh Report.* Furthermore, we have requested sub-national or regional data for all of these metrics in sections II.A.iii. and II.A.iv., *supra.*

49. At this point, we request data for all of these metrics on a sub-national level and ask what the data show about differences between urban and rural areas in terms of demand and competition. Does information currently exist demonstrating differences in subscribership, MOUs, ARPU, churn, and prices in urban versus rural areas? If so, would commenters be willing to provide such information?

50. Beginning with the *Seventh Report,* we presented subscribership figures on an EA basis using NRUF data. Should the Commission use NRUF data to determine subscribership and penetration rates in rural areas, however they may be defined? Would the NRUF data be able to provide accurate and meaningful statistics on rural subscribership given the limitations of the data discussed? Are there other sources of information that could be used to determine the number of subscribers and penetration rates in rural areas?

51. The Commission knows of few studies that have been done comparing mobile telephone pricing in urban versus rural areas. However, Econ One has completed one study, which it presented at the Public Forum and which we included in the *Seventh Report,* that compared pricing in the 25 largest U.S. cities (with an average population of 4.4 million) with 25 randomly-selected towns or cities (with an average population of 95,611) located in RSAs. For purposes of its analysis, Econ One considered the towns or cities located in an RSA to be rural areas. The company reported very similar pricing in these two groups of cities. However, while the mean prices for monthly service in urban and rural areas were similar, there was a wider range of prices in rural areas than in urban areas. We ask for additional information on whether there are meaningful pricing differences between urban and rural areas. To the extent that such differences exist, what are the reasons for such differences? Should additional analyses on the differences between urban and rural mobile telephone pricing be performed? What additional conclusions can be drawn, and what are the limitations of those conclusions?

52. Finally, to what extent do nationwide carriers affect prices and competition in rural areas, even if such carriers do not offer service in those areas? Do these carriers create the same competitive pressures in rural areas that they do in urban areas?

vi. Wireless-Wireline Competition

53. Mobile telephone service has been considered both a complement to and a substitute for wireline services. Historically, most consumers used their mobile phones as a mobile complement to their wireline phones by using their mobile handsets only when away from their homes or places of work. However, as noted in the *Seventh Report,* an estimated 3 to 5 percent of consumers have ''cut the cord,'' meaning they do not subscribe to wireline phone service. The *Seventh Report* included information about consumers who consider their mobile phones their primary phone but may still continue to have a wireline phone. Moreover, the *Seventh Report* noted that, due to the fact that several mobile telephone packages have extensive local service areas and/or include free long distance, many consumers now use their mobile phones instead of their wireline phones to make ''long distance'' calls.

54. In order to track and analyze competition between mobile telephone and wireline services more effectively, we request data on (i) The number of mobile telephone subscribers who do not subscribe to residential wireline service, (ii) the percentage of consumers' total monthly voice communication minutes that are made from mobile phones, (iii) the percentage of consumers' total monthly long distance minutes that are made from mobile phones, (iv) the percentage of mobile telephone subscribers' calls and minutes that occur in their homes using their mobile phones, (v) the percentage of both mobile telephone and wireline calls and minutes that terminate on mobile phones, and (vi) demographic data on which groups of consumers have allocated a substantial portion of their voice communications to mobile telephone service. Should the Commission gather additional data, perform additional analyses, or draw new conclusions on wireless-wireline competition?

55. The *CMRS Reports* have also discussed the effects of mobile telephone service on the operational and financial results of companies that offer wireline services. Such effects include a decrease in the number of residential access lines, a drop in long distance revenues, and a decline in payphone profits. To what extent is the increase in mobile telephone usage a major cause of these developments, and why? Given these developments, we ask for comment on the extent to which mobile telephone service competes with wireline service. What other effects has mobile telephone service had on the provision of other telecommunications services by other service providers? What new developments in wireless-wireline competition have occurred since the *Seventh Report?* What are the major reasons for these developments?

vii. Satellite Operators

56. Satellite operators offer mobile telephone services which, from a consumer's point of view, have many of the same characteristics as terrestrial-based mobile telephone services. At least four carriers currently provide mobile satellite services (''MSS'') in the United States: Globalstar Telecommunications LTD, Iridium Satellite LLC, Inmarsat Limited, and Mobile Satellite Ventures. We request that these carriers submit as part of their comments information detailing the geographic areas of the United States in which they provide coverage as well as those areas in which they offer service to new customers. Taking into account such information on MSS service availability, we seek comment on the extent of competition among MSS providers. To what extent do MSS providers compete with terrestrial-based mobile telephone providers? Are MSS services substitutes for terrestrial-based mobile telephone and data services? Should MSS providers be considered an additional service provider in the analysis of service availability in the Eighth Report, or do they offer services that generally are not substitutes for services provided by terrestrial CMRS carriers, even though they fall under the legal umbrella of CMRS?

viii. Resellers

57. Resellers offer service to consumers by purchasing airtime at wholesale rates from facilities-based providers and reselling it at retail prices. According to information provided to the Commission in its ongoing local competition and broadband data gathering program, the resale sector accounted for approximately 5 percent of all mobile telephone subscribers as of December 2001. To what extent are resellers creating competitive pressures in the mobile telephone sector? In 2002, WorldCom, which claimed to be the largest reseller of post-paid wireless service the United States, announced that was abandoning the resale business. Who are the remaining major resellers? How many subscribers do they have? From a consumer perspective, what are the benefits of buying from a reseller versus a facilities-based provider? Are resellers selling to specific demographic

segments? The *Seventh Report* discusses ''mobile virtual network operators'' (''MVNOs'') that are a type of reseller that focuses on brand development, with the intent to offer a niche product and to have better customer retention. An example of an MVNO is Virgin Group LLC (''Virgin''). Virgin has an arrangement with Sprint PCS whereby Virgin markets prepaid mobile telephone service using Sprint PCS's network. We ask for comment on how this resale model has affected the provision of resale services. We also ask for information about companies that have employed the MVNO resale model since the *Seventh Report.*

ix. International Developments

58. The *Seventh Report* compared the mobile telephone sectors in the United States, Western Europe, and parts of the Asia-Pacific by examining a number of performance measures, including penetration levels, subscriber growth, MOUs, and pricing. The scope of international comparisons in the *Seventh Report* and previous *CMRS Reports* has been constrained by the availability of comparable international data. For the purposes of the Eighth Report, we seek data to update and possibly expand upon these international comparisons.

59. The international comparisons in the *Seventh Report* were based on various sources of data that were generally current as of the second half of 2001. We request suggestions on sources of data for updating international comparisons of penetration levels, subscriber growth, and usage for the year 2002.

60. The *Seventh Report* used Organization for Economic Co-Operation and Development (''OECD'')/ Teligen mobile service baskets and revenue per minute (''RPM'') estimates to compare mobile telephone pricing in the United States, Canada, and parts of Western Europe and the Asia-Pacific. We request recommendations on alternative methods of comparing mobile telephone pricing in different countries and associated sources of data. We also seek suggestions on sources of data for updating the international comparison of RPM.

61. We also invite suggestions on additional performance measures and associated data sources for comparing the U.S. mobile telephone sector with those in other countries.

B. Competition in the Mobile Data Sector

i. Introduction

62. For purposes of its *CMRS Reports,* the Commission considers mobile data to be the delivery of non-voice information to a mobile device. Two-way mobile data services include not only the ability to receive non-voice information on an end-user device but the ability to send it from an end-user device to another mobile or landline device using wireless technology. The *Seventh Report* concluded that competition within the mobile data sector is developing successfully, as evidenced by the multitude of dynamic services, service packages, and pricing plans available to consumers from a variety of providers.

63. For purposes of the Eighth Report, we seek information on the significant changes and developments that have occurred in the mobile data industry since the publication of the *Seventh Report.* Do commenters believe that competition is continuing to develop successfully within the mobile data sector?

64. In analyzing competition within the mobile data industry, it is necessary to consider the relationship between mobile data and mobile telephone service. Both services are offered by many of the same providers using the same networks and end user devices, yet differences in the nature of the two services exist. Hence, to what extent are the mobile data and mobile telephone sectors separate, and to what extent are they converging?

65. Related to this issue of convergence, the *Seventh Report* discussed the emergence of smartphone devices during 2001 and 2002 that combine the organization and data-centric features of personal digital assistants (''PDAs'') with the voice capabilities of mobile telephones. We seek comment on the extent to which the emergence of smartphones has signified a convergence between mobile data and mobile telephone service, and we seek data on the growth in the number of users of these devices. How many smartphones have been sold in the United States? What types of consumers purchase smartphones? What are the features and capabilities of the various devices? Finally, have there been any new developments related to smartphones since the *Seventh Report?*

ii. Services & Content

66. The *Seventh Report* described three general categories of mobile data providers and their corresponding devices: (i) mobile telephone operators offering services primarily on mobile telephone handsets, (ii) providers of mobile data access to handheld PDA devices and laptop computers, and (iii) paging carriers offering services on pagers and two-way messaging devices. However, in analyzing subsectors within the mobile data industry, for several reasons we have found it most effective to segregate the industry not along the lines of devices, spectrum bands, or network technologies, but instead along the lines of the types of services available to consumers. First, the types of mobile data services available to consumers have become increasingly similar across devices. Many of the same mobile data services are available on mobile telephone handsets, PDAs, smartphones, and laptop computers. With the exception of traditional one-way pagers, most mobile data devices have the ability to offer some form of text messaging, web browsing, and e-mail access. Second, carriers use a variety of different spectrum bands—including broadband PCS, cellular, and SMR—and a variety of different network technologies—including CDMA, GSM, cdma2000 1xRTT (''1xRTT''), and General Packet Radio Service (''GPRS'')—to provide many of the same mobile data services.

67. The types of services discussed in the *Seventh Report* include: Paging, Short Messaging Service (''SMS'') and instant messaging (''IM''), web browsing, e-mail and corporate server access, location-based services, and short range data transmissions. Are there additional categories that should be analyzed in the Eighth Report? What new and innovative services are mobile data providers offering? In addition, we seek comment on the extent to which mobile data services are substitutes for or complements of one another? For example, do messaging services compete with e-mail services? Are web browsing services a complement to e-mail access? Which services are most often bundled together, and why?

68. In addition to seeking data on the level of competition among different mobile data services, we request information on the extent to which mobile data services compete with data services offered through wireline devices. For example, have mobile e-mail services been a substitute for e-mail access on a personal computer offered through a dial-up, Digital Subscriber Line (''DSL''), or cable modem connection?

69. Furthermore, we request data on the growth and success of the various mobile data services. Which services are most popular with consumers and have the highest adoption rates? In what

ways do services offered over 1xRTT and GPRS networks differ from those offered over 2G networks?

70. In addition to requesting comment on mobile data services generally and the economic relationship between these services, we also seek information related to specific mobile data services.

(a) Paging

71. Traditional paging service consists of a one-way data communication sent to a mobile device that alerts the user when it arrives. The communication usually consists of a phone number for the user to call, but could also contain a short text message or information update. As discussed in the various *CMRS Reports,* the number of subscribers to traditional one-way paging services has been declining over the past few years. In addition, all of the major paging carriers have filed for bankruptcy reorganization over the past two years. Do commenters foresee continued demand for one-way paging services? If so, who are the major purchasers of one-way paging services? What specific advantages do one-way paging services offer for these consumers versus other services? How many paging subscribers also own a mobile telephone?

(b) Web Content

72. As explained in the *Sixth and Seventh Reports,* mobile web browsing services allow users to access content from the World Wide Web on a mobile device. The web browsing services offered can vary by provider and by device in both the type and amount of content that users can receive. For example, mobile web subscribers using laptops may be able to connect to any web page and view graphical content, while users accessing the web from a mobile telephone handset may be able to view only a limited number of text-based web pages that have been redesigned for mobile devices. Furthermore, some carriers limit the web sites that users can access to those with which they have a content agreement.

73. We invite commenters to address the extent to which users have a choice of which content they receive. Can users of mobile web services access any web site, only those have been re-designed for access on mobile device, or only those with whom the carrier has a content agreement? Approximately how many web sites have been specially designed for use on a mobile device?

74. Have there been any notable technological developments in the past year that have facilitated a greater availability of mobile web browsing services?

(c) Text Messaging

75. As mentioned in the *Seventh Report,* SMS provides the ability for users to send and receive text messages to and from mobile devices with maximum message length ranging from 120 to 500 characters. We seek data on the growth rate of SMS in the United States over the past several months. How many SMS messages have been sent in the United States over time?

76. Furthermore, as of mid-2002, most of the major mobile telephone carriers had introduced the ability to exchange text messages with subscribers on other carriers' networks. We seek information on how this intercarrier interoperability has affected SMS adoption rates and the volume of SMS traffic.

77. In addition to offering SMS, some carriers offer IM services. Instant messaging services, such as AOL Instant Messenger (''AIM'') and MSN Messenger, enable users to send and receive messages within a community of users, creating a chat-style atmosphere, whereas SMS is a communication between two individuals. From their mobile devices, AIM users are able to tell whether or not someone from their ''buddy list''—a list of other AIM users with whom the initial user communicates—is online. In addition, AIM users can communicate with their buddies regardless of whether they are on a desktop computer or a mobile telephone. AT&T Wireless, Sprint PCS, T-Mobile, and Palm have offered AIM to their users, while Verizon Wireless and Cingular Wireless have offered MSN Messenger. Unlike with SMS, open access or interprovider interoperability is not available with IM services; AIM users cannot exchange messages with users of MSN Messenger. To what extent have these access and interoperability issues affected demand for instant messaging services in the mobile data sector?

78. As mentioned, the Commission invites comment of the extent to which the various mobile data services compete with each other. In particular, we ask to what extent text messaging and e-mail are substitutes for each other. In what ways do the features and capabilities of the two services vary?

(d) E-mail and Corporate Server Access

79. As discussed in the *Seventh Report,* a variety of services are available to consumers that allow them to receive e-mail messages while mobile from an existing home- or work-based e-mail account. We seek information from commenters on the specific capabilities of these various mobile e-mail services. To what extent are features such as forwarding and deleting integrated with consumers' other e-mail accounts? Are users able to view attachments? In addition, we seek information on the specific capabilities of services that allow users to access corporate intranets or files stored on corporate servers from a mobile device.

80. With regard to both types of services, we seek information on how much data or content a user can download, and how quickly and reliably. Furthermore, are these services secure? What level of security and/or encryption is offered by these various services?

iii. Devices

81. Mobile data services, and in particular mobile Internet services, are offered on a variety of end-user devices. Which devices are used most for mobile Internet access? Furthermore, do any of the features of mobile data devices—such as battery life, data storage capacity, and screen size—constrain the ability of users to access mobile Internet services, and therefore limit the demand for such services? Which features on which devices might limit mobile Internet access the most?

iv. Subscribership

82. In addition to seeking information on the capabilities of the various mobile data services discussed, we also request data on the number of subscribers to and users of mobile Internet services. How many people in the United States subscribe to or use any type mobile Internet service? Do most mobile Internet users also subscribe to mobile telephone service? How many people use the different types of mobile data services, including paging, SMS, IM, web browsing, e-mail, and corporate server access? In the *Seventh Report,* we used NRUF data to estimate the number of paging subscribers at the end of 2001. Do commenters agree that this is a reliable method for calculating the number of subscribers to that particular service?

83. How many people subscribe to or use higher-speed mobile Internet services provided over 1xRTT and GPRS networks? How does subscribership to the various mobile data services vary by geographic region and among various demographic groups?

v. Service Availability

84. In preparation for the Eighth Report, we request information on the availability of mobile data services offered over 2G mobile networks, as well as higher-speed mobile data

services offered over 1xRTT and GPRS networks.

85. Do carriers offer any type of mobile Internet service in any portion of their service areas? In what percentage of their license and network footprints do carriers offer mobile Internet services? Are the same types of services available in all areas? What percent of carriers' licensed and network POPs are located in the areas where mobile Internet services are available? Does mobile data service availability vary between urban and rural areas?

86. The *Seventh Report* summarized the deployment of next-generation network technologies 1xRTT and GPRS on a county-by-county basis as of March 2002. For purposes of the Eighth Report, we seek information on the extent to which carriers have continued to upgrade their networks with these next-generation technologies since March 2002. In what portion of their license and network footprints have carriers deployed 1xRTT or GPRS, and in what portion do they offer advanced wireless services using these technologies? Are the same types of advanced wireless services available in all areas? Does the availability of advanced wireless services vary between urban and rural areas? What percent of carriers' licensed and network POPs are located in the areas where 1xRTT or GPRS-based mobile data services are available? Furthermore, what percent of the U.S. population has access to advanced wireless services provided by 1xRTT and/or GPRS?

87. Furthermore, we request comment on the actual data transfer speeds that most users experience with GPRS and with 1xRTT. Do the two technologies differ in this respect? To what degree are individual users' data transfer speeds depleted as more users log on to the network in a given area?

88. Finally, we request information on the extent to which mobile data providers are upgrading or plan to upgrade their networks with additional next generation technologies beyond GPRS and 1xRTT, such as EDGE, WCDMA, and 1X–EV.

vi. Pricing

89. In analyzing competition in the mobile data industry and the general evolution of this sector, we have examined the prices charged by providers for various mobile data services. While the analysis of pricing in the mobile telephone sector includes an estimate of per-minute pricing, such an estimate is not feasible in the mobile data sector given the variety of services and the variety of pricing techniques used by carriers. Therefore, the previous *CMRS Reports* have summarized and compared, in some cases over time, the different prices carriers charge as well as various pricing methods they use.

90. For the Eighth Report, we request data from providers on the prices they charge for the various mobile data services they offer. How have these prices changed over time?

91. In addition to asking for actual pricing data, we also seek comment on the general trends related to mobile data pricing. To what extent do providers bundle mobile data services with each other and with voice service? Do providers offer mobile data services as add-ons service to voice service or as standalone services? Are mobile data services offered on a per-use basis or on a monthly subscription basis? Finally, do providers charge for mobile data services by the megabyte of data, by the minutes of usage, by the incremental service, and/or do they offer a flat rate for unlimited usage?

92. In addition, we seek information on the degree to which mobile data providers, in their pricing plans and marketing efforts, distinguish between mobile Internet services offered over 2G networks and those offered over next-generation 1xRTT and GPRS networks.

93. Are the prices of mobile data services generally the same across all the geographic areas in which carriers offer them? Do the prices vary by region, in particular between urban and rural areas? To the extent that they do vary by region, what are the reasons for this?

vii. WiFi

94. Over the past year, the WLAN technology, Wireless Fidelity or WiFi, has begun to play an increasingly important role in the mobile data industry. WiFi operates in the unlicensed spectrum bands using primarily the 802.11 wireless technology standards and allows data transfer speeds of up to 11 Mbps. While WiFi is not a CMRS service per se, we included a discussion of it in previous *CMRS Reports* because of its potential to affect the provision of CMRS services.

95. Users of mobile devices with WiFi capabilities or attachments can establish a high-speed, wireless connection to the Internet within a variety of settings, including restaurants, coffee shops, hotels, airports, convention centers, office buildings, and college campuses. These buildings or campuses generally connect to the Internet via a high-speed wireline technology such as a T–1 line, and WiFi users lose their high-speed wireless connections once they exit these settings. Given both the advantages and limitations of WiFi, do commenters believe that it competes with commercial, interconnected mobile data services? Does WiFi have the potential to compete with these services to a greater extent in the future?

96. For purposes of the Eighth Report, we request data on the current extent of WiFi deployment and usage. How many people or what percent of the U.S. population subscribes to or uses WiFi services? In how many locations is WiFi currently available, and in which types of locations do most users establish WiFi connections? What data transfer speeds do most users experience with the various WiFi technology standards, including 802.11a, 802.11b, and 802.11g? In addition, what are the major drawbacks of WiFi access? To what degree are WiFi connections secure for end users? What, if any, interference problems are associated with WiFi access? Are voice services possible and available using WiFi connections?

97. Finally, we seek information on the other uses of unlicensed spectrum besides WiFi. Are both voice and data services available through these other types of connections? What is the extent of deployment of these other services?

III. Fixed Voice and Data Services

98. In addition to providing an analysis of competition in the commercial mobile services industry, the *CMRS Reports* have also included an appendix providing an overview of the current state of the fixed wireless industry. Some licensees of spectrum bands traditionally used for CMRS are using that spectrum to provide fixed wireless services. Furthermore, because most fixed wireless carriers have typically offered two-way, high-speed data services, the fixed wireless sector is discussed in greater detail in the Commission's annual report on the deployment of broadband services, pursuant to section 706 of the Telecommunications Act of 1996.

99. With the *Notice of Inquiry,* the Commission seeks the data from commenters on the state of the fixed wireless industry to incorporate into the Fixed Wireless Appendix of the Eighth Report. Who are the major providers of fixed wireless services? Have the carriers that experienced financial difficulties over the past two years made progress towards recovery and formed new business strategies? Which spectrum bands are currently being used by operators to deploy fixed services, including the unlicensed spectrum bands? In what portion of the United States, measured by both population and land area, are fixed wireless services available? To what extent have fixed wireless networks been deployed in rural areas? How many fixed wireless

systems employ unlicensed spectrum? How many businesses and households currently subscribe to fixed wireless services? What are the typical data transfer rates offered by the various fixed wireless systems? Have there been in any major technological innovations that have affected the fixed wireless industry over the past year?

IV. Procedural Matters

A. Ex Parte Presentations

100. This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Filing of Comments and Reply Comments

101. We invite comment on the issues and questions set forth. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 27, 2003, and reply comments on or before February 11, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

102. Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four (4) copies of each filing. Parties choosing to submit, as part of their comments, map files in response to requests in paragraphs 11 through 14, paragraph 56, or paragraph 86, *supra,* should submit a CD (compact disc) containing one copy of the maps of their service areas, with the various distinctions described, in a format, either MapInfo table (.tab) or Tagged Image Format (.TIF), that will allow Commission staff to open and use these files in MapInfo Professional software, version 6.0. If you have questions about submitting map files, please contact Chelsea Fallon at (202) 418–7991. Paper filings and CDs containing map files can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Chelsea Fallon, Federal Communications Commission, Room 4–A335, 445 12th Street, SW., Washington, DC 20554.

V. Ordering Clauses

103 Accordingly, it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, the *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–218 Filed 1–6–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 4
Tuesday, January 7, 2003

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, January 17, 2003 at 9:30 a.m. in Coeur d' Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: January 17, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d; Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 p.m.

Dated: January 31, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–225 Filed 1–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469–807]

Stainless Steel Wire Rod From Spain: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Williams or Timothy Finn at (202) 482–2371 or (202) 482–0065, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (2002).

Background

On September 3, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from Spain (67 FR 56267).

Pursuant to a request made by Carpenter Technology Corp. (the petitioner), the Department initiated an administrative review of the antidumping duty order on SSWR from Spain for the period September 1, 2001, through August 31, 2002 on October 18, 2002 (67 FR 65336)(October 24, 2002)). On December 6, 2002, the petitioner withdrew its request for the administrative review of SSWR from Spain.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on SSWR from Spain for the period September 1, 2001 through August 31, 2002 because the requesting party has withdrawn its request for this administrative review within the 90-day time limit and no other interested parties have requested a review of SSWR from Spain for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 31, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–290 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–050. *Applicant:* The University of Texas at Austin, Fusion Research Center, 1 University Station, C1510, Austin, TX 78712. *Instrument:* ''Helimak'' Custom

Magnetized Plasma Turbulence Apparatus. *Manufacturer:* Academia Sinica Institute of Plasma Physics, Peoples Republic of China. *Intended Use:* The instrument is intended to be used to study turbulence and transport in plasmas, principally hydrogen and argon plasmas. The basic properties of the plasma—density, temperature, and velocity—will be measured as well as the behavior of the fluctuations (turbulence) in those quantities. Experimental objectives include validating the nonlinear mechanisms occurring in plasma turbulence and the effect of shear in the flow velocity in stabilizing the turbulence. *Application accepted by Commissioner of Customs:* December 12, 2002.

Docket Number: 02–051. *Applicant:* National Renewable Energy Lab (NREL), 1617 Cole Boulevard, Golden, CO 80401. *Instrument:* Ignition Quality Tester. *Manufacturer:* Advanced Engine Technology Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used to measure the ignition delay, maximum chamber temperature, rate of heat rise, and autoignition temperature of various diesel fuels, surrogate molecules, additives, and alternative fuel compounds to better understand how the molecular structure of fuel compounds relates to the ignition quality (and potentially to the exhaust emissions). The instrument will also be used to characterize new fuels (such as biodiesel) prior to testing them in engines. *Application accepted by Commissioner of Customs:* December 20, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–291 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 991215340–2318–02]

Collaborative Science, Technology, and Applied Research (CSTAR) Program

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The CSTAR Program represents an NOAA/NWS effort to create a cost-effective continuum of basic and applied research to operations through collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences. These activities will engage researchers and students in applied research of interest to the operational meteorological community and improve the accuracy of forecasts and warnings of environmental hazards by applying scientific knowledge and information to NWS products and services. The NOAA CSTAR Program is a contributing element of the U.S. Weather Research Program. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Proposals must be received by the NWS no later than close of business February 21, 2003. We anticipate review of full proposals will occur during March 2003, and funding should begin during early summer 2003 for most approved projects. June 1, 2003, should be used as the proposed start date on proposals, unless otherwise directed by the Program Officer. Applicants should be notified of their status within 3 months of the closing date. All proposals must be submitted in accordance with the guidelines below. Failure to follow these guidelines will result in proposals being returned to the submitter.

ADDRESSES: Proposals must be submitted to NOAA/NWS; 1325 East-West Highway, Room 15330; Silver Spring, Maryland 20910–3283.

FOR FURTHER INFORMATION CONTACT: Sam Contorno (see **ADDRESSES**), or by phone at 301–713–3557 ext. 150, or fax to 301–713–1253, or via internet at samuel.contorno@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934.

Catalog for Federal Domestic Assistance

This program is designated under Catalog for Federal Assistance number 11.468, Applied Meteorological Research.

Funding Availability

NOAA/NWS believes its warning and forecast mission will benefit significantly from a strong partnership with outside investigators. Current program plans assume the total resources provided through this announcement will support extramural efforts through the broad academic community. Because of Federal budget uncertainties, it has not been determined how much money will be available through this announcement. Proposals should be prepared assuming an annual budget of no more than $125,000. It is expected that approximately four awards will be made, depending on availability of funds. This program announcement is for projects to be conducted by university investigators for a 1-year, 2-year, or 3-year period. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for initial funding, the NWS has no obligation to provide additional funding in connection with that award in subsequent years. Funding for each subsequent year of a multi-year proposal is at the discretion of the NWS. It will be contingent upon satisfactory progress in relation to the stated goals of the proposal to address specific science needs and priorities of the NWS and the availability of funds. Applications must include a scope of work and a budget for the entire award period. Each funding period must be discrete and clearly distinguished from any other funding period.

The funding instrument for extramural awards will be a cooperative agreement since one or more NOAA/NWS components—forecast offices, National Centers for Environmental Prediction (NCEP) service centers, or regional headquarters—will be substantially involved in implementation of the project. Examples of substantial involvement may include, but are not limited to, proposals for collaboration between NOAA scientists and a recipient scientist and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. A matching share is not required by this program.

Program Objectives

The long term objective of the CSTAR Program is to improve the overall forecast and warning capabilities of the operational hydrometeorological community by addressing the following national science priorities through collaborative efforts between the NWS and academic institutions: Quantitative precipitation estimation (QPE) and forecasting (QPF), including precipitation type and probabilistic QPF; Flash flood and probabilistic river prediction; Prediction of seasonal-to-interannual and decadal climate variability, and the impacts of these

variabilities on extreme weather events; Prediction of tropical cyclones near landfall, including track, intensity, and associated precipitation, and hazardous weather; Prediction of marine conditions, including fog, winds, coastal ocean, and open-ocean waves; The effect of topography and other surface forcing on local weather regimes; Locally hazardous weather, especially severe convection, winter weather, and phenomena that affect aviation; and Conditions conducive for the rapid development of wildfires and the dispersion of smoke and other air-quality hazards.

Individual NWS Regions and NCEP service centers have a subset of these science priorities due to differences in factors such as topography, weather regimes, and mission.

Program Priorities

NOAA will give sole attention to individual proposals addressing the identified science priorities from NWS Regions and NCEP service centers as listed below. Proposals must clearly specify which primary science priorities are being addressed.

Since a goal of this call for proposals is to foster long-term collaborative interactions between a university and NWS operational offices/NCEP service centers, a proposal must be submitted by at least two principal investigators (PIs) from the same college or university. Proposals submitted jointly by two or more separate colleges or universities are not allowed. At least two of the PIs within this program must be full, assistant, or associate college or university professors with substantial documented involvement in the proposal. Proposals should clearly state the role of each PI in the project.

Except for researchers who are associate, assistant, or full professors at the Naval Postgraduate School or other federally funded educational institutions, Federal Government employees are not allowed to be listed as PIs, although collaboration between the academic community and NOAA within the project is strongly encouraged.

A proposal must contain at least two distinct subtasks addressing one or more of the science priorities listed by a NWS Region or NCEP service center. PIs must clearly address the science and technology transfer process contained within the proposal. This includes their interactions with operational NWS units, including weather offices, River Forecast Centers, NCEP service centers, and regional offices, with the specific goal of improving operational services.

The names, affiliations, and phone numbers of relevant NWS regional/NCEP focal points are provided. Prospective applicants should communicate with these focal points for information on priorities within regional science priorities. Focal points cannot assist in the conceptual design and specific elements to be included in a proposal. Applicants should send completed proposals to the NOAA/NWS program office identified earlier rather than to individual focal points.

NWS Eastern Region Science Priorities

NWS Eastern Region has identified the following science priorities to be addressed by proposals:

The roles of unique geomorphic influences on weather problems such as the type, amount, and intensity of precipitation associated with the complex terrain of the Appalachian Mountains, Atlantic Seaboard, and the Great Lakes. The interaction of these terrain features with large scale weather systems such as winter storms, hurricanes, and closed lows.

The development of more accurate, region-specific conceptual models for tornado, hail, high wind (both convective and synoptic), flash flood, and localized heavy snow events. Detailed investigation of the roles of mesoscale phenomenon such as gravity waves, thermal and moisture boundaries, and localized instabilities during these events. Improved understanding of low-topped severe convection and associated tornado development.

Cloud physics and associated microphysical processes and their role in determining precipitation type and snowfall efficiency.

The relationship of land-falling tropical storms and hurricanes to severe weather and heavy precipitation resulting in flooding and flash flooding.

The processes of snow melt and river ice formation and break-up and their roles in widespread river flooding. The development of high resolution surface analysis systems and the application of these analyses to verification of gridded hydrometeorological forecasts.

The development of improved methodologies for forecasting the onset and dissipation of fog and low ceilings for different geographical locations across the eastern United States.

The processes that lead to high winds, waves, and flooding near the Atlantic Coast, Chesapeake Bay, and Great Lakes. Innovative approaches to formulate, produce, display and deliver high-resolution forecasts and products, an evolving priority of the user community throughout the heavily populated eastern United States. Develop innovative methodologies to communicate forecast uncertainties to a wide variety of users.

FOR FURTHER INFORMATION CONTACT:
Kenneth Johnson, NOAA/NWS/Eastern Region Scientific Services Division, 631–244–0136, or on the Internet at *Kenneth.Johnson@noaa.gov.*

NWS Southern Region Science Priorities

The NWS Southern Region science priorities to be addressed by proposals are as follows:

Development of improved techniques for the prediction of freezing and frozen precipitation events in the NWS Southern Region, including timing, areal extent, intensity and amount.

Development of diurnal lightning and cloud climatologies stratified by weather regime to better predict the onset, spatial coverage, and duration of precipitation, especially under weak synoptic forcing.

Development of improved techniques to forecast and monitor heavy-rain events.

Development of relationships between land falling tropical cyclones and associated severe weather, including heavy precipitation, flooding and flash flooding, throughout the southern United States.

Development of improved techniques to observe and forecast winds and waves in the coastal environment. Improved understanding of the influences of the complex terrain of the southern Appalachians, the Texas Hill Country, the Mexican Plateau, and the Gulf Coast on weather problems such as type, amount, duration and intensity of precipitation and resultant flash flooding.

Development of optimal strategies for using mesoscale models to accurately predict the effects of topography and other surface forcing on local weather. Improved methodologies to better predict the development and duration of stratus, fog and other conditions which result in instrument flight rule (IFR) flying conditions in the NWS Southern Region.

Development of methodologies for use of Doppler weather radar (WSR–88D) and multi-sensor technology to detect/identify storm features leading to, and/or associated with, the development of weak (F0 and F1) tornadoes and waterspouts which are characteristic of tropical and semi-tropical environments.

Development of methodologies for the use of Doppler weather radar and other multi-sensor technology to detect precursor conditions and enhance forecast capabilities for improved

warnings associated with microburst producing thunderstorms.

Development of optimal WSR–88D scan strategies and adaptable parameter settings for accurately estimating heavy precipitation amounts.

Development of techniques to improve hydrologic modeling and prediction for Southern U.S. rivers and streams, including calibration of models, improved distributive modeling techniques, and improved soil moisture accounting. Development of methodologies to better predict the type, duration, and severity of arctic outbreaks that result in damaging freezes affecting the NWS Southern Region.

Development of improved methods for utilizing data analysis, manipulation and communication technology (Internet, Web sites, Geographic Information Systems, etc.) for preparing and disseminating high resolution hydrological and meteorological forecasts and products which best serve the changing needs of varied users.

FOR FURTHER INFORMATION CONTACT: Dan Smith, NOAA/NWS/Southern Region Scientific Services Division, 817–978–2671, or on the Internet at dan.smith@noaa.gov.

NWS Central Region Science Priorities

The NWS Central Region science priorities to be addressed by proposals are as follows:

Improve hazardous weather warnings for different geographical locations in Central Region, including the Central Plains, Northern Plains, Ozark Plateau, mid and upper Mississippi Valley, lower Ohio Valley and Great Lakes regions by:

Developing more accurate, region-specific conceptual models for tornado, hail, high wind, heavy precipitation, and elevated nocturnal convection events.

Developing more accurate, region-specific diagnostic strategies/ methodologies to interrogate remotely sensed data (radar, satellite, etc.) and numerical weather guidance with emphasis on weaker and shorter lived severe thunderstorm and tornado events.

Improve Central Region winter weather precipitation forecasts by:

Developing a climatology of winter precipitation events including, but not limited to, heavy snow, sleet or freezing rain stratified by Central Region County Warning Forecast Areas and relating it to public products and services. Linking cloud physics and associated micro-physical processes, precipitation efficiency, water vapor distribution, and transport of winter stratiform and/or convective clouds to improved methodologies for estimating or forecasting winter precipitation amounts.

Improve the accuracy (probability of detection) and average forecast lead time for winter storm warnings by better understanding the development, intensification, and sudden acceleration northeastward of strong mid-west storm systems following Rocky Mountain lee-side cyclogenesis.

Improve aviation forecast products and services by:

Developing a climatology of ceiling, visibility, and low-level wind shear for Central Region county warning forecast areas.

Developing better methodologies to forecast the onset and dissipation of fog and low ceilings for different geographical locations in the Central Region.

Improve the utility and utilization of numerical guidance in the forecast process by developing more efficient and effective methodologies to display, review, and interrogate numerical model output in an operational environment.

Improve the quality of weather services to the public through the development of new and innovative forecast methodologies and products.

FOR FURTHER INFORMATION CONTACT: Peter Browning, NOAA/NWS/Central Region Scientific Services Division, 816–891–7734 ext. 300, or on the Internet at *Peter.Browning@noaa.gov.*

NWS Western Region Science Priorities

The NWS Western Region science needs to be addressed by proposals are as follows:

Improve operational precipitation and hydrological forecasts in complex terrain across a wide range of western U.S. meteorological regimes. In the West, water is a critical and closely managed resource.

Improve wintertime forecasts of snow in complex terrain.

Improve acquisition and use of non-NWS observational networks, such as mesonets.

Improve analysis through better assimilation systems that produce more realistic analysis in complex terrain.

Improve numerical model performance in western complex terrain.

Research, develop and help implement statistical methods to objectively produce bias-corrected model grids (e.g. from grids, not just points) to improve gridded forecasts.

Research, develop and help implement methods to objectively downscale forecast and ensemble grids to the resolution necessary (2–5km) to help improve IFPS forecasts and forecast methodology.

Improve hydrological modeling, through use of emerging techniques, such as distributed hydrologic modeling, of rain/snow melt processes in complex terrain.

Develop conceptual models that better describe the effect of complex terrain on weather forecasts.

Improve precipitation and flash flooding forecasts produced from high based convection with a deep dry sub cloud layer in the arid inter-mountain region.

Improve forecast of significant precipitation events that produce flooding and affect marine forecasts along the west coast.

Improve forecast of the onset of the monsoon season and flash flooding in the desert Southwest.

Improve snow and wind forecast associated with arctic front intrusion into complex terrain in the northern plains.

Improve fire-weather forecasts and smoke dispersion in the western United States.

Improve forecasters ability to produce forecasts of temperature, humidity, and winds in complex terrain.

Improve forecast and warnings of severe weather unique to the western United States through the better use of observational systems and conceptual models.

Improve the performance of coastal and mountain-top WSR–88D radars on a variety of NWS Western Region weather regimes, such as high based inter-mountain convection and low topped storms along the west coast.

FOR FURTHER INFORMATION CONTACT: Andy Edman, NOAA/NWS/Western Region Scientific Services Division, 801–524–5131, or on the Internet at *andy.edman@noaa.gov.*

NWS Alaska Region Science Priorities

The science priorities of the NWS Alaska Region to be addressed by proposals are as follows (in order of importance):

Determine the geomorphic influences on type, amount, duration, and intensity of snow associated with complex terrain to improve forecasts for the Anchorage, Alaska, area, where over 50 percent of the state population resides.

Develop better methodologies to forecast winds over the marine inland waters of southeast Alaska. Methodologies can include numerical forecasts from mesoscale models.

Improve methodologies to forecast fog in the Alaska coastal communities

located along the coast of the Gulf of Alaska.

Improve the winter season WSR–88D-based rain and snow QPEs. All six sites are influenced by complex topography.

Improve the accuracy (probability of detection) and lead time for airborne volcanic ash detection and tracking by better understanding source conditions and early developments of the ash cloud. Improvements must include remote sensing techniques.

Innovative approaches to remote sensing that result in the formulation and production of high resolution hydrometeorological forecasts of river and localized flash flooding produced by synoptic and mesoscale weather systems interacting with complex terrain in south-central Alaska. Emphasis should be placed on the Kenai River watershed.

FOR FURTHER INFORMATION CONTACT: Gary Hufford, NOAA/NWS/Alaska Region Environmental and Scientific Services Division, 907–271–3886, or on the Internet at *gary.hufford@noaa.gov.*

NWS Pacific Region Science Priorities

The science priorities of the NWS Pacific Region to be addressed in proposals are as follows:

Optimize the utility of new and existing observing systems, with emphasis on satellites and their use in providing precipitation estimations.

Develop, optimize, and utilize local high-resolution modeling capabilities aimed at providing operational real-time guidance as well as a tool for locally conducted research.

Conduct Pacific Basin synoptic climatological studies, with emphasis on flash-flood and high-wind events.

FOR FURTHER INFORMATION CONTACT: Ken Waters, NOAA/NWS/Pacific Region Regional Scientist, 808–532–6413, or on the Internet at *Ken.Waters@noaa.gov.*

NWS National Centers for Environmental Prediction Science Priorities

NCEP service centers have established the following science priorities which may be addressed in proposals:

Aviation Weather Center

Develop numerical and subjective techniques to improve the accuracy of convective forecasts in the 2–6 hour time scale.

Improve the treatment of drizzle-size droplets in clouds that lead to aircraft icing through improved parameterization and/or explicit micro physics techniques that are both economical and support cloud initialization using existing observational data sets, including the Automated Surface Observing System, radar, and satellite data.

Enhance understanding of the triggering mechanisms associated with different families of clear-air turbulence events, including gravity waves emanating from convective systems, gravity waves induced by jet streaks, cross-mountain flow, critical boundary-layer flow regimes, etc.

Improve the observations, data assimilation, and modeling of the moisture profile in the boundary layer to better forecast the occurrence of fog and low cloud ceilings.

Climate Prediction Center

Develop dynamically and ensemble-based techniques to improve the prediction of weekly, monthly, and seasonal precipitation skill, including regional climate prediction systems.

Improve global and domestic forecasts of seasonal climate variability through better understanding and modeling of the coupled atmosphere/ocean system and the effect of variations on that coupling to ensemble prediction.

Hydrometeorological Prediction Center (HPC)

Conduct research addressing the broad geographical and seasonal ranges of problems associated with QPF, from initiation, duration, movement, to precipitation type. This includes the spectrum from drizzle to heavy rain and from lake-effect snow to synoptic-scale snowfall.

Develop new model verification techniques to enhance current methods of objectively assessing which models will perform best. The techniques should apply for all time ranges used by HPC, from less than 6 hours to 7 days.

Develop techniques for using output from model ensembles in forecast operations to improve the accuracy of both deterministic and probabilistic forecasts and to add information concerning uncertainty.

Develop techniques to modify gridded numerical guidance to produce gridded forecast products, which are made horizontally, vertically, and temporally consistent using sound meteorological theory.

Marine Prediction Center (MPC)

Develop a robust marine verification system that utilizes the various observations from both in-situ and remote sources. Parameters to be verified include, but are not limited to: Wind speed and direction; sea-state (height, period, direction); visibility; weather; and icing conditions.

Improve forecasting techniques for warnings and forecasts of hazardous marine conditions through the use of additional data sources (especially in-situ), as well as improved use of all marine data sources in numerical weather prediction and model data assimilation techniques.

Storm Prediction Center

Develop mesoscale or storm-scale numerical prediction models, ensemble approaches, and verification techniques to improve forecasts of the location, timing, intensity, and mode of deep moist convection.

Develop three-dimensional mesoscale analysis techniques, observing systems, expert systems or statistical guidance, robust conceptual models, and scientific understanding to improve forecasts of the location, timing, intensity, and mode of deep moist convection.

Tropical Prediction Center (TPC)

Improve hurricane intensity forecasting using either empirical or dynamical forecasting techniques, especially those that combine atmospheric/oceanic interactions and which can be incorporated with existing TPC intensity guidance.

Improve forecasts for the size of tropical cyclones. A goal of this effort will be the generation of probabilistic guidance by MPC and TPC on 34, 50 kt, and 64 kt forecast wind radii for marine and emergency management interests.

Develop an ‘‘all-platform’’ surface wind display and analysis over marine areas for use by TPC and MPC that would cover the larger scale tropical storm environment and that would combine QuikScat, SSM/I, ERS, low-level cloud-drift winds, and conventional observations, including buoys and ships, etc.

Note: In all instances, projects are encouraged which not only address the priorities of individual NCEP service centers but also address aspects of the NCEP/Environmental Modeling Center's goals for improving data assimilation and numerical modeling of the atmosphere, oceans, and Earth's surface.

FOR FURTHER INFORMATION CONTACT: Ralph Petersen, NOAA/NWS/National Centers for Environmental Prediction, 301–763–8000 ext. 7200, or on the Internet at *ralph.petersen@noaa.gov.*

Eligibility

All accredited U.S. colleges and universities, including federally funded educational institutions such as the Naval Postgraduate School, are eligible for funding under this announcement. The restriction is needed because the results of the collaboration are to be incorporated in academic processes which ensure academic

multidisciplinary peer review as well as Federal review of scientific validity for use in operations. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

The evaluation criteria and weighting of the criteria are as follows:

(1) *Operational Applicability (30 percent):* What is the likelihood of the proposed science activities to improve operational hydrometeorological services? Are proposed research activities transferrable to forecast operations in a reasonable time frame?

(2) *Scientific Merit (25 percent):* What is the intrinsic scientific value and maturity of the subject and the study proposed as they relate to the specific science priorities?

(3) *Technology Transfer and Methodology (25 percent):* What is the degree of collaboration with multiple operational units throughout the project? What is the level of planning by researchers to integrate results into operations successfully and efficiently? Were focused scientific objectives and strategies, including data management considerations, project milestones, and timeliness, used?

(4) *Capability of researchers (10 percent):* Do PIs clearly document past scientific collaborations with operational meteorologists? Have past interactions been successful? Are researchers likely to maintain effective and consistent interactions with operational forecasts throughout the course of the proposed research program? Have researchers demonstrated the ability to conduct successful research?

(5) *Cost Effectiveness (10 percent):* Do researchers demonstrate the ability to leverage other resources? Is there a high ratio of operationally useful results versus proposed costs?

Selection Procedures

All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review. Three to seven NWS experts representing NWS Regions and Centers may be used in this process. Their recommendations and evaluations will be considered, along with the program policy factors discussed below, by the selecting official who will select the proposals to be funded and determine the amount of funds available for each proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Because the selecting official will take into account program policy factors, awards may not necessarily be made to the highest scored proposals.

Program Policy Factors

The selecting official may take into account the need to spread awards geographically and among priorities and universities. While a university may submit more than one application, the selecting official may limit the awards to only one per university. Finally, the amount of funds available and whether an application substantially duplicates other projects currently approved for funding or funded by NOAA or other Federal agencies may be considered by the selecting official.

Proposal Submission

Proposals must adhere to the five provisions under ‘‘Proposals’’ and the seven requirements under ‘‘Required Elements’’ by the deadline of February 21, 2003. Failure to follow these restrictions will result in proposals being returned to the submitter without review. In addition, applicants should note those provisions under ‘‘Other Requirements/Information’’ that must be complied with before an award can be made.

Proposals

(1) Proposals submitted to the NOAA NWS CSTAR Program must include the original and two unbound copies of the proposal.

(2) Investigators are not required to submit more than three copies of the proposal. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11), or otherwise unusual materials submitted as part of the proposal. Only an original version of the federally required forms and two copies are needed.

(3) Proposals should be no more than 30 pages (numbered) in length, including budget, investigators vitae, and all appendices and should be limited to funding requests for 1- to 3-year duration. Appended information should be counted within the 30-page total. Federally mandated forms are not included within the page count.

(4) Proposals should be sent to the NWS (see **ADDRESSES**).

(5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All proposals should include the following elements:

(1) *Signed title page.* The title page should be signed by the PIs and the institutional representative and should clearly indicate which project area is being addressed. The PIs and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale, and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution's investigators, total proposed cost, and budget period.

(3) *Results from prior research.* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award, and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Project description.* The proposed project must be completely described, including identification of the problem; scientific objectives; proposed methodology; relevance to the priorities of the NWS Region or NCEP service center; operational applicability; scientific merit; proposed technology transfer; past collaborations with operational hydrometeorologists; cost effectiveness of research; and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included. The project description, including references but excluding figures and other visual materials, must not exceed 15 pages of text. In general, proposals from three or more investigators may include a project description containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) *Budget.* Applicants must submit a Standard Form 424 ‘‘Application for Federal Assistance,’’ including a detailed budget using the Standard Form 424a, ‘‘Budget Information—Non-Construction Programs.’’ The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the project description. Additional text to justify expenses should be included as necessary.

(6) *Vitae.* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all

publications in the last 3 years with up to five other relevant papers.

(7) *Current and pending support.* For each investigator, submit a list which includes project title, supporting agency with grant number, investigator months, dollar value, and duration. Requested values should be listed for pending support.

Other Requirements/Information

(1) Applicants may obtain a standard NOAA application kit from the NOAA Office of Grants Management. Primary applicant Certification: All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

(2) Federal Policies and Procedures Applicable to this announcement:

A. *Environmental Impact.* Applicants whose proposed projects may have an environmental impact should furnish sufficient information to assist proposal reviewers in assessing the potential environmental consequences of supporting the project.

B. The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(3) There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and the NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

(4) *Disposition of Unsuccessful Applications.* Those proposals that are not ultimately selected for funding will be destroyed.

(5) If an application is selected for funding, the DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving financial assistance from the NOAA/NWS. The NOAA/NWS does not have a direct telephonic device for the deaf (TDD capabilities can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424 and 424A has been approved by OMB under the respective control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget control number.

Executive Orders 12866 and 12372

This notice has been determined to be not significant for purposes of E.O. 12866. Applications under this program are not subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for rules relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Dated: December 31, 2002.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 03–224 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystems Committee, Squid, Mackerel and Butterfish Committee, Law Enforcement Committee, Highly Migratory Species Ad-Hoc Committee, and Executive Committee will hold a public meeting.

DATES: Tuesday, January 21, 2003, through Thursday, January 23, 2003. On Tuesday, January 21, 2003, the Ecosystems Committee will meet from noon until 2 p.m. The Squid, Mackerel and Butterfish Committee will meet from 2–5 p.m. On Wednesday, January 22, 2003, the Law Enforcement Committee will meet from 8:30–9:30 a.m. Council will meet from 9:30 a.m. until 4:00 p.m. On Thursday, January 23, 2003, the Highly Migratory Species Ad-Hoc Committee will meet from 8–9 a.m. The Executive Committee will meet from 9–10 a.m. Council convenes from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Trump Plaza Hotel, Mississippi Avenue and the Boardwalk, Atlantic City, NJ, telephone 609–441–2708.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the Council's committees and the Council itself are: the Ecosystems Committee will discuss Council's role in identifying and addressing NMFS habitat/bycatch requirements; the Squid, Mackerel and Butterfish Committee will discuss and finalize measures to be included in Amendment 9 (gear impacts on EFH, Illex fishery moratorium, multiple year specification process, bycatch/discard reduction in Loligo fishery, and ''other''); the Law Enforcement Committee will review the Fisheries Achievement Award Program and discuss background investigation needs/limitations regarding Council members and advisors; Council will conduct a scoping meeting for Amendment 1 to the Dogfish Fishery Management Plan (consider, among other management measures, the following items for inclusion in Amendment 1: define a rebuilding biomass target for Bmsy, establish rebuilding timeframe consistent with Section 304(e) of the Magnuson-Stevens Act, address bycatch/discard issues, address different allocation processes,

''other''); approve Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan for Secretarial submission; the Highly Migratory Species Ad-Hoc Committee will discuss establishment of a permanent sub-quota allocation of bluefin tuna for North Carolina during December 1 through January 31 time period; Council will receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: January 2, 2003.

Richard W. Surdi,

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

[FR Doc. 03–276 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[030102001–3001–01]

United States Climate Change Science Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of availability and request for public comment.

SUMMARY: The United States Climate Change Science Program (CCSP) is announcing the availability of a draft document ''Strategic Plan for the Climate Change Science Program.'' The complete draft strategic plan was posted on the CCSP web site at *http://www.climatescience.gov* for public comment on November 11, 2002. The CCSP is seeking public comment in order to receive feedback from the widest range of interested parties. This draft document is being issued for comment only and is not intended for interim use. The CCSP will review public comments received on the draft document. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued for use.

In your review, we ask you to provide a perspective on the content, implications, and challenges outlined in the plan as well as suggestions for any alternate approach you wish to have considered, and the types of climate and global change information required by policy makers and resource managers. We also ask that you comment on any inconsistencies within or across chapters, and omissions of important topics. For any shortcomings that you note in the draft, please propose specific remedies.

In your comments, please consider the following issues: (1) Overview on the content, implications, and challenges outlined in the plan; (2) areas of agreement and disagreement, as appropriate; (3) suggestions for alternative approaches, if appropriate; (4) inconsistencies within or across chapters; (5) omissions of important topics; (6) specific remedies for identified shortcomings of the draft plan; (7) type of climate and global change information required by representative groups; (8) other comments not covered above. Please do not comment on grammar, spelling, or punctuation. Professional copy editing will correct deficiencies in these areas for the final draft.

Please follow these instructions for preparing and submitting your review. Using the format guidance described below will facilitate our processing of reviewer comments and assure that your comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, and email address(es). Overview comments on the chapter should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the chapter should follow your overview comments and should identify the page and line numbers to which they apply. Comments that refer to a table or figure should identify the table or figure number. In the case of tables, please also identify the row and column to which the comment refers. Order your comments sequentially by page and line number. At the end of each comment, please insert your name and affiliation. An example of the format is provided on the CCSP web site at: *http://www.climatescience.gov/Library/stratplan2003/comments.htm.*

DATES: Comments on this draft document should be submitted by January 18, 2003. Comments received after that date will be considered to the extent practicable. All comments submitted will be posted on the CCSP web site for public review.

ADDRESSES: The Strategic Plan for the Climate Change Science Program is available on the CCSP web site at: *http://www.climatescience.gov/Library/stratplan2003/.* A free single copy of the Plan will be available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006 or submitting e-mail to *information@climatescience.gov.*

All comments should be sent electronically to *comments@climatescience.gov* or to Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006. (Phone: 202–223–6262, Fax: 202–223–3065, e-mail: *smaccrac@usgcrp.gov);* or visit the CCSP Web site at *http://www.climatescience.gov.*

SUPPLEMENTARY INFORMATION: Scientists recognized the existence of a natural ''greenhouse effect'' and the possibility of human-induced changes in the Earth's climate and environment as early as the 19th century and, over time, this possibility has become widely accepted. In the last decades of the 20th century, public debate about the contribution of human activities to observed climate change and potential future changes in climate, and about courses of action to manage risks to humans and the environment, has been active and frequently contentious. These debates cover a range of both science and policy issues, including the extent to which global temperatures have in fact changes; whether most of the observed overall change in temperature of the last 50 years is attributable to human activities (principally the burning of biomass and fossil fuels and changes in land cover); how much climate might change in the future; and

whether proposed response strategies, such as reductions in emissions or efforts to enhance natural carbon sequestration processes, would produce economic or other effects more detrimental than the effects of climate change itself.

Science-based information is required to inform public debate on the wide range of climate and global change issues necessary for effective public policy and stewardship of natural resources. Developing the needed information will require addressing a wide-ranging set of fundamental science questions, significantly improving observations and data management, and implementing highly credible and transparent mechanism for conveying research results in ways that are useful for decisionmakers and the public.

1. The Issues for Science and Society

Environmental systems on Earth are changing constantly. The climate system is highly variable, with conditions varying significantly over the span of seasons, years, decades, and longer timescales. Fluctuations in the amount of energy emitted by the Sun, slight deviations in the Earth's orbit, volcanic injections of gases and particles into the atmosphere, and natural variations in ocean temperatures and currents, all cause variability and changes in climate conditions.

Against the backdrop of these natural forces, humans have become agents of environmental change, at least on timescales of decades to centuries, even as living standards for billions of people have improved tremendously. Emission of greenhouse gases and pollutants and extensive changes in the land surface (both tied to widespread development of modern living standards) have potential consequences for global and regional climate. They also influence air quality, the Earth's protective shield of stratospheric ozone, the distribution and abundance of water resources and many plant and animal species, and the ability of ecosystems to provide life-supporting goods and services.

The challenge is that discerning whether human activities are causing observed climatic changes and impacts requires detecting a small, decade-by-decade trend against the backdrop of wide temperature changes that occur on shorter timescales (seasons to years). A sound base of observations, as well as a solid understanding of how the Earth's environmental systems respond to different natural and human forces, is essential to detecting and attributing climate change to any specific cause. Currently, measurements taken at the Earth's surface, in various layers of the atmosphere, in boreholes, in the oceans, and in other environmental systems such as the cryosphere (frozen regions) indicate that the climate is warming. Further, in Climate Change Science: An Analysis of Some Key Questions (NRC, 2001a), the National Research Council (NRC), the operational arm of the National Academy of Sciences (NAS), concluded that ''the changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability.'' The NRC report elaborates on this point:

Because of the large and still uncertain level of natural variability inherent in the climate record and the uncertainties in the time histories of the various forcing agents (and particularly aerosols), a causal linkage between the buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20th century cannot be unequivocally established. The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because the model simulations could be deficient in natural variability on the decadal to century time scale. The warming that has been estimated to have occurred in response to the buildup of greenhouse gases in the atmosphere is somewhat greater than the observed warming. At least some of this excess warming has been offset by the cooling effect of sulfate aerosols, and in any case one should not necessarily expect an exact correspondence because of the presence of natural variability.

Apparently contradicting the evidence of warming are inconsistencies in the observational record, particularly related to the differences between temperature trends measured at the surface and measurements taken from satellite observations of the lower- to mid-troposphere, which show no significant warming trends in the last two decades of the 20th century. Reconciling these differences and improving observational capabilities remains an important challenge with significant potential implications for decisionmaking.

But the issues extend beyond those of ''detection and attribution'' to projecting how climate and other related environmental conditions could change in the future. Confidence in such projections is tied to knowledge of basic climate processes and natural variability, the ability of climate models to represent accurately these processes, and the ability of models to represent interactions of natural processes and any human-induced changes in the climate system.

Improving the capability to project future climate conditions would be of significant economic and social value. Consider, for example, the benefits of improved forecasts of the onset of the El Niño-Southern Oscillation (ENSO). ENSO is a large-scale climate oscillation in the equatorial Pacific Ocean that changes phase every few years. Its effects reverberate through the global climate system to affect precipitation and temperature in many regions of the world. Armed with a basic understanding of the processes involved, scientists intensified systematic observations and improved their models, and by the late 1990s could successfully forecast some conditions months in advance. While much additional work is required to improve ENSO forecasts, some climatic features can now be accurately predicted, with significant societal benefits. In the United States, decisionmakers are able to better estimate energy requirements, prepare for storms, manage water resources, anticipate where damage recovery efforts will be required, and foresee other potential impacts. In countries in South America, Africa, and other regions of the world, resource planners and managers are applying model results to develop agricultural plans, anticipate potential food surpluses and shortages, and prepare for other impacts. Such as planning has already reduced suffering and saved crops that would have otherwise been lost to drought and other ENSO effects.

Improving the ability to project long-term trends in climate and related conditions is important to understanding the effects of different types and amounts of natural and human forcing, such as that due to different levels of greenhouse gas and aerosol emissions. Therefore, anticipating how possible future forcing could affect the climate requires development of complex computer models that incorporate the many features of the climate system and their interactions. Such models have been under construction for decades, and require ongoing observations and research into basic processes to fuel their continued improvement. Already, large-scale features of climate can be simulated, but many significant uncertainties remain to be addressed. Current models project significantly different increases in the global average surface temperature, from approximately 1 °C during the 21st century to more than 5 °C during the

same period. This range of uncertainty incorporates both different estimates of climate sensitivity (the increase in temperature that results from a doubling of atmospheric concentrations of carbon dioxide (CO_2)) and a wide range in projections of future greenhouse gas emissions. Reducing uncertainty in climate models will involve improving understanding of the role of clouds in different parts of the atmosphere; improving characterization of the circulation and interaction of energy in the atmosphere and oceans; improving understanding of the Earth's natural carbon cycle; developing more detailed representations of features of the feedbacks from the land surface; incorporating additional types of forcing agents (e.g., ''black carbon''); and making progress on other fundamental challenges. Improved projections of climate changes on decadal or longer timescales are also important for many areas of planning and resource management where decisions made today have implications for decades to come. However, at this point, modeled projections of the future regional impacts of global climate change are often contradictory and are not sufficiently reliable tools for planning.

Even if the scientific community were to develop a ''perfect'' model of the global climate, it would not be possible to predict the level and rate of future changes in climate resulting from human activities. This is because these activities are not predetermined, but rather depend on human choices, which will, in turn, affect future climate conditions. The activities in question-energy-related emissions of greenhouse gases; changing the surface of the land through clearing, conversion, and growth of different land covers; and the release of chemicals (both natural and human-made) that alter the productivity of the land and the oceans—all depend on a more basic set of human driving forces. These include population growth, living standards, characteristics of technology, and institutions (*e.g.*, market conditions). While we cannot predict these conditions, we can use a different set of models to project the climatic and environmental consequences of different combinations of basic human driving forces. These models are useful for performing ''If * * *, then * * *'' scenario experiments that make it possible to begin to explore the potential implications of different technological and institutional conditions for future emissions, climate, and living standards.

Improving our ability to project potential future variations and changes in climate and environmental conditions, subject to assumptions about natural and human forcing, could enable governments, businesses, and communities to reduce damages and seize opportunities to benefit from changing conditions by adapting infrastructure, activities, and plans. But realizing this potential will require sustained research and improved understanding of the interactions among climate, natural and managed environmental systems, and human activities. Scientific research needs to address a range of issues.

The complexity of the Earth's environmental systems, the unique conditions that they provide for life, and the state of these systems, including potential impacts on society, make climate and global change among the most important issues for our generation, and perhaps for generations to come. Given what is at stake, the Nation and the international community need the best possible science to inform public debate and decisionmaking in government and the private sector.

2. The Research Program

In February 2002, President George W. Bush announced the formation of a new management structure, the Climate Change Science Program (CCSP), to coordinate and provide direction to US research efforts in the areas of climate and global change. These efforts include the US Global Change Research Program (USGCRP), which began as a Presidential initiative in 1989 and was codified by Congress in the Global Change Research Act of 1990 (Pub. L. 101–606), and the Climate Change Research Initiative (CCRI), which was announced by the President in June 2001 to reduce significant uncertainties in climate science, improve global climate observing systems, and develop resources to support policy- and decisionmaking. Departments and agencies of the US Government that participate in the CCSP include the Departments of Agriculture, Commerce (the National Oceanic and Atmospheric Administration and the National Institute of Science and Technology), Defense, Energy, Health and Human Services, Interior (US Geological Survey), State, and Transportation; the Agency for International Development, the Environmental Protection Agency; the National Aeronautics and Space Administration; the National Science Foundation; and the Smithsonian Institution. The Office of Science and Technology Policy, the Council on Environmental Quality, and the Office of Management and Budget provide oversight on behalf of the Executive Office of the President.

The CCRI provides a distinct focus to the overall research program. The focus is defined by a set of uncertainties about the global climate system that have been identified by policymakers and analyzed by the NRC (NRC, 2001a). Areas addressed in the NRC report include climate observations, aerosols, North American carbon sources and sinks, climate feedbacks and modeling, scenarios of human-induced forcing, and development of methodologies for risk management. The CCRI is described more completely in Part I of this draft strategic plan.

The CCRI accelerates key areas of research that have been under development over the past thirteen years in the USGCRP. Over this period, the United States has made a large scientific investment—totaling more than $20 billion in the areas of climate change and global change research. With these resources, research programs supported by the agencies that participate in the USGCRP, in collaboration with several other national and international science programs, have mounted extensive space-based, surface, and in situ (at fixed sites) systems for global observations and monitoring of climate and ecosystems variables; have documented and characterized several important aspects of the sources, sinks, abundances, and lifetimes of greenhouse gases; have begun to address the complex issues surrounding various aerosol species that may significantly influence climate; have advanced our understanding of global water and carbon cycles (but with major remaining uncertainties); and have developed several approaches to computer modeling of global climate. The program has been a comprehensive, interagency collaboration that has facilitated scientific discovery. Program results have revealed and addressed many of the complex interactions of climate and other environmental systems, and have started to lay the foundation for understanding the relationships between natural variability and human activities that may contribute to change. US researchers have developed fundamental insights into how the climate and Earth system functions: Insights that are incorporated into advanced models throughout the world. The USGCRP is described more completely in Part II of this draft strategic plan.

CCSP's management will balance the CCRI's near-term focus on climate change with the USGCRP's breadth, creating a program that both accelerates development of answers to scientific

aspects of key climate policy issues and support advances in knowledge of the physical, biological, and chemical processes that influence the Earth system. This breadth is required to continue improving our understanding of the complex interrelationships among a broad set of systems that regulate climate and the global environment, as described in NRC's seminal report, Global Environmental Change: Research Pathways for the Next Decade (NRC, 1999a). The Pathways report lays out a framework of research questions that has significantly influenced the development of this strategic plan. Other reports issued by several boards, committees, and panels of the NRC have advised the USGCRP on specific aspects of climate and global change research and have influenced specific components of its research strategy. Indeed, the program has benefited from extensive interaction with the NRC, which is responsible for evaluating the USCGRP periodically for scientific merit.

By investigating a targeted yet comprehensive set of questions, the CCSP seeks to focus attention on key climate changes issues that are important for public debate and decisionmaking, while maintaining sufficient breadth to facilitate the discovery of the unexpected. Establishing a careful balance between focus and breadth is essential if scientists are to develop knowledge of the interactions between natural variability and potential human impacts on the Earth system. This is an important management issue for the program and is a prerequisite for making as effective and productive use as possible of the significant resources allocated to this purpose. Establishing this balance, and a rational sequencing of research priorities and potentials, will require input from both decisionmaking and the science community.

3. Guiding Principles for CCSP

To fulfill its mission as the publicly sponsored research program addressing climate change issues for the United States, the CCSP must continuously adhere to three guiding principles that underpin the objectivity, integrity, and usefulness of its research and reporting:

(i) The scientific analyses conducted by the CCSP are policy relevant but not policy driven. CCSP scientific analyses (including measurements, models, projections, and interpretations) are directed toward continually improving our understanding of climate, ecosystems, land use, technological changes, and their interactions. In developing projections of possible future conditions, the CCSP addresses questions in the form of ''If * * *, then * * *'' analyses. Policy and resource management decisions are the responsibility of government officials who must integrate many other considerations with available scientific information.

(ii) CCSP analyses should specifically evaluate and report uncertainty. All of science, and all decisionmaking, involves uncertainty. Uncertainty need not be a basis for inaction; however, scientific uncertainty should be carefully described in CCSP reports as an aid to the public and decisionmakers.

(iii) CCSP analyses, measurements, projections and interpretations should meet two goals: Scientific credibility and lucid public communication. Scientific communications by the CCSP must maintain a high standard of methods, reporting, uncertainty analysis, and peer review. CCSP public reports must be carefully developed to provide objective and useful summaries of findings.

4. The Research Strategy

This draft strategic plan for the CCSP, incorporating both the USGCRP and the CCRI, is built around a carefully constructed set of questions and objectives for each of the major areas of the program. Primary research questions that focus on broad science issues are supported by more detailed questions and objectives that can be addressed in specific research initiatives and projects. For each major question addressed, the strategy includes a very brief description of the state of knowledge, subsidiary questions, descriptions of products and deliverables, information of activities and infrastructure needed to make progress, and the benefits or ''payoffs'' from research. For each major program area, linkages to important national and international research activities are also described.

This plan should be considered a draft subject to substantial revision through public comment and independent review by the NAS.

Part I of the plan describes the components of the CCRI as discussed above. These are organized into three broad programmatic areas: (1) Research focused on key climate change uncertainties; (2) Climate quality observations, monitoring, and data management; and (3) Resources for decision support.

Part II of the plan describes major research questions about how the components of Earth's environmental system function, how the system may change in response to human and natural forcing, and what the implications of these changes may be for a variety of human activities and natural environments and resources. For each major research question, a state of knowledge, illustrative research questions, research needs, and a list of products and payoffs are described. The specific topics addressed and their corresponding major research questions are:

(1) Atmospheric Composition

Question 1: What are the climate-relevant chemical and radiative properties, and spatial and temporal distributions, of human-caused and naturally occurring aerosols?

Question 2: What is the current quantitative skill for simulating the atmospheric budgets of the growing suite of chemically active greenhouse gases and their implications for the Earth's energy balance?

Question 3: What are the effects of regional pollution on the global atmosphere and the effects of global climate and chemical change on regional air quality and atmospheric chemical inputs to ecosystems?

Question 4: What are the time scale and other characteristics of the recovery of the stratospheric ozone layer in response to declining abundances of ozone-depleting gases and increasing abundances of greenhouse gases?

Question 5: What ate the couplings among climate change, air pollution, and ozone layer depletion, which were once considered as separate issues?

(2) Climate Variability and Change

Question 1: What is the sensitivity of climate change projections to feedbacks in the climate system?

Question 2: To what extent can predictions of near-term climate fluctuations and projections of long-term climate change be improved, and what can be done to extend knowledge of the limits of predictability?

Question 3: What is the likelihood of climate-induced changes that are significantly more abrupt than expected, such as the collapse of the thermohaline circulation or rapid melting of the major ice sheets?

Question 4: Whether and how are the frequencies, intensities, and locations of extreme events, such as major droughts, floods, wildfires, heat waves, and hurricanes, altered by natural climate variations and human-induced climate changes?

Question 5: How can interactions between producers and users of climate variability and change information be optimally structured to ensure essential

information needed for formulating adaptive management strategies is identified and provided to decisionmakers and policymakers?

(3) The Global Water Cycle

Question 1: To what extent does the water cycle vary and change with time, and what are the internal mechanisms and external forcing factors, including human activities, responsible for variability and change?

Question 2: How do feedback processes control the interactions between the global water cycle and other parts of the climate system (*e.g.,* carbon cycle, energy), and how are these feedbacks changing over time?

Question 3: What are the key uncertainties in seasonal to interannual predictions and long-term projections of water cycle variables, and what improvements are needed in global and regional models to reduce these uncertainties?

Question 4: How do the water cycle and its variability affect the availability and quality of water supplied for human consumption, economic activity, agriculture, and natural ecosystems; and how do its interactions and variability affect sediment and nutrient transports, and the movement of toxic chemicals and other biogeochemical substances?

Question 5: What are the consequences of global water cycle variability and change, at a range of temporal and spatial scales, for human societies and ecosystems? How can the results of global water cycle research be used to inform policy and water resource management decision processes?

(4) Land Use and Land Cover Change

Question 1: What are the primary drivers of land use and land cover change?

Question 2: What tools or methods are needed to allow for better characterization of historic and current land use and land cover characteristics and dynamics?

Question 3: What advances are required to allow for the projection of land use and land cover patterns and characteristics 10–50 years into the future?

Question 4: How can projections be made of potential land cover and land use change over the next 10–50 years for use in models of impacts on the environment, social and economic systems, and human health?

Question 5: What are the combined effects of climate and land use and land cover change and what are the potential feedbacks?

(5) The Global Carbon Cycle

Question 1: What are the magnitudes and distributions of North American carbon sources and sinks and what are the processes controlling their dynamics?

Question 2: What are the magnitudes and distributions of ocean carbon sources and sinks on seasonal to centennial time scales, and which processes control their dynamics?

Question 3: What are the magnitudes and distributions of global terrestrial, oceanic and atmospheric carbon sources and sinks and are they changing over time?

Question 4: What are the effects of past, present, and future land use change and resource management practices on carbon sources and sinks?

Question 5: What will be the future atmospheric carbon dioxide and methane concentrations, and how will terrestrial and marine carbon sources and sinks change in the future?

Question 6: How will the Earth system, and its different components, respond to various options being considered by society for managing carbon in the environment, and what scientific information is needed for evaluating these options?

(6) Ecosystems

Question 1: What are the most important linkages and feedbacks between ecosystems and global change (especially climate), and what are their quantitative relationships?

Question 2: What are the potential consequences of global change for ecosystems and the delivery of their goods and services?

Question 3: What are the options for sustaining and improving ecosystem goods and services valued by societies, given projected global changes?

(7) Human Contributions and Responses to Environmental Change

Question 1: What are the magnitudes, interrelationships, and significance of the primary human drivers of change in atmospheric composition and the climate system, changes in land use and land cover, and other changes in the global environment?

Question 2: What are the current and potential future impacts of global environmental variability and change on human welfare, what factors influence the capacity of human societies to respond to change, and how can resilience be increased and vulnerability reduced?

Question 3: How can the methods and capabilities for societal decisionmaking under conditions of complexity and uncertainty about global environmental variability and change be enhanced?

Question 4: What are the potential human health effects of global environmental change, and what tools and climate and environmental information are needed to assess and address the cumulative risk to health from these effects?

In addition, the final chapter in Part II is devoted to Grand challenges in modeling, observations, and information systems. Modeling, observations, and data and information dissemination are crosscutting, ‘‘enabling’’ activities and are tightly coupled to the seven research elements. These are needs that are particular to a given research area and must be planned and implemented in close association with the research that they support or draw on. However, they also need to be managed in a focused manner because they provide essential infrastructure that must serve multiple purposes within the CCSP-enabling fundamental research, as well as supporting assessment and decisionmaking—and because they depend on the distributed assets of CCSP agencies, some of which were originally developed to serve other needs.

Part III of the plan describes communication, cooperation, and management issues that cut across all areas of the program. The specific topics addressed are:

(1) Reporting and Outreach

Inventory of Existing Agency Activities
Reporting and Outreach for Decisionmakers
Reporting and Outreach for the Public
Outreach for K–12 Education

(2) International Research and Cooperation

Goals of International Cooperation in Climate Science
The International Framework
Bilateral Cooperation in Climate Change Research and Technology
Multilateral International Cooperation in Research and Observational Programs
Regional Cooperation In Global Change Research
U.S. Plans And Objectives For Future International Cooperation

(3) Program Management and Review

Scientific Guidance
Interagency Planning and Implementation
Program Integration

References

NRC, 1999a. Committee on Global Change Research, National Research Council, Global

Environmental Change: Research Pathways for the Next Decade (Washington, DC: National Academy Press).

NRC, 2001a. National Research Council, Committee on the Science of Climate Change, Climate Change Science: An Analysis of Some Key Questions (Washington, DC: National Academy Press).

James R. Mahoney,

Assistant Secretary for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 03–292 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 20, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Security Service at (703) 325–6182.

Title, Associated Forms, and OMB Number: Defense Security Service FL 14–a, November 1991, OMB No. 0704–0206.

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, reliability of the individual being investigated to ascertain his or her suitability for a position of trust so that the DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information. Adjudicative determinations are made in accordance with DoD 5200.2–R, ‘‘DoD Personnel Security Program.’’ This regulation specifies medical information is to be obtained from records and physicians when there is an indication of a history of mental or nervous disorder, use or abuse of prescribed or illegal drugs, such as marijuana, narcotics or barbiturates; or abuse or excessive use of alcohol. Obtaining such medical information provides the adjudicator with a complex picture of the individual without it, the adjudicator may not be able to make a determination as to where or not the individual should be granted access to classified information.

Affected Public: Individuals, business, or households.

Annual Burden Respondents: 11,700.

Number of Burden Hours: 7,020.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden Per Response: 0.6 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

See ‘‘Needs and Uses’’.

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–252 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: Notice.

In compliance with Section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (C3I) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof, Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 20, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Security Service at (703) 325–6182.

Title, Associated Forms, and OMB Number: Department of Defense request for Personnel Security Investigation; DD Form 1879; OMB Number 0704–0384. Needs and Uses: The information collection requirement is necessary to solicit minimal information and investigative information, which will become part of the security clearance investigations for access to classified information or employment in sensitive positions.

Affected Public: Individuals, Business, or other for profit.

Annual Burden Respondents: 32,164.

Number of Burden Hours: 8.041.

Number of Respondents: 32,164.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 1879, ‘‘Department of Defense Request for Personnel Security Investigation,’’ is used to request Single Scope Background Investigations (SSBIs), National Agency Checks with Local Agency Checks and Credit Checks (NACLCs), National Agency Checks (NACs), SSBI Periodic Reinvestigations (PRs), or Special Investigative Inquiries (SIIs). It will accompany the Standard Form 85–P, ‘‘Questionnaire for Public Trust Position,’’ or Standard Form 86, ‘‘Questionnaire for National security Position,’’ which will be used by the Defense Security Service for the purpose of conducting SSBIs, NACLCs, NACs, PRs, and SIIs. These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a automated collection of techniques or personnel security or trustworthiness determination continuing eligibility for retention of a security clearance, or assignment to other sensitive duties.

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–253 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: DoD Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0022.

Type of Request: Revision.

Number of Respondents: 885,000.

Responses Per Respondent: 1.

Annual Responses: 885,000.

Average Burden Per Response: 3 minutes.

Annual Burden Hours: 44,250.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form enables civilian dentists to record the results of their examination findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental health status of their members.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–254 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: U.S. Army ROTC 4-Year College Scholarship Application (For High School Students); CC Form 114–R; OMB Number 0702–0073.

Type of Request: Reinstatement.

Number of Respondents: 11,000.

Responses Per Respondent: 1.

Annual Responses: 11,000.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 8,250.

Needs and Uses: The applications are available to high school students. After the applications for U.S. Army ROTC College Scholarship Program are completed, they are submitted to Headquarters, Cadet Command for review, screening and selection of scholarship recipients. The application and information provide the basis for the scholarship award.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies for the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–255 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: Pre-Candidate Procedures; USMA Forms 375, 723, 450, 21–12, 21–27, and 381; OMB Number 0702–0060.

Type of Request: Reinstatement.

Number of Respondents: 66,200.

Responses Per Respondent: 1.

Annual Responses: 66,200.

Average Burden per Response: 8 minutes (average).

Annual Burden Hours: 8,350.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the USMA Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by the Office of Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the USMA.

Affected Public: Individuals or households.

Frequency: On Ocassion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR,

1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–256 Filed 1–06–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: Appointment of Chaplains for the Military Services; DD Forms 2741 and 2088; OMB Number 0704–0190.

Type of Request: Extension.

Number of Respondents: 797.

Responses Per Respondent: 1.

Annual Responses: 797.

Average Burden Per Response: 46 minutes (average).

Annual Burden Hours: 614.

Needs and Uses: Per 32 CFR part 65, in conjunction with 10 U.S.C. 532 and 591, professionally qualified clergy persons shall be appointed as chaplains to provide for the free exercise of religion for all members of the Military Services, their dependents, and other authorized persons. Since World War I, the professional qualifications of clergy have been certified by the faith group of which these clergy are members. Religious organizations register with the Department of Defense for the purpose of endorsing clergy as fully qualified to serve as chaplains in the Armed Forces. No clergy person may become a chaplain without this endorsement, and the loss of this endorsement constitutes a loss of professional status. It also certifies the number of years of professional experience for each candidate.

Affected Public: Not-for-profit institutions.

Frequency: On occasion; annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–257 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Submission for Office of Management and Budget Review; Comment Requested

AGENCY: Department of Energy.

ACTION: Agency Information Collection Extension.

SUMMARY: The Department of Energy (Department or DOE) has submitted an information collection package to the Office of Management and Budget (OMB) for extension under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The package covers the collection of information from state and alternative fuel provider fleets that are subject to the DOE's Alternative Fuel Transportation Program (10 CFR Part 490). The regulations contained in DOE's Alternative Fuel Transportation Program have been promulgated in accordance with sections 501 and 507(o) of the Energy Policy Act of 1992, Pubic Law 102–486, 106 STAT. 2776; 42 U.S.C. 13251, 13257(o). This information is used by the Department to determine the compliance statuses of covered fleets regulated under the Alternative Fuel Transportation Program. The information is critical to ensure the Government has sufficient information to ensure compliance of fleets with reporting and alternative fuel vehicle acquisition requirements.

DATES: Comments must be filed on or before February 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to DOE Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), Room 10102, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. (Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the address listed below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Susan L. Frey, Director, Records Management Division, Office of Records and Business Management, IM–11/GTN Bldg. , U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: The package contains the following information:

(1) *Current OMB control number:* 1910–5101.

(2) *Package Title:* Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. (Formerly entitled, ''Recordkeeping and Reporting Requirements of the Alternative Fuel Transportation Program DOE/OTT/101.)

(3) *Summary:* A three-year extension is requested because the information is critical to ensure that the Government has sufficient information to ensure that covered fleets are complying with annual reporting and acquisition requirements under the Alternative Fuel Transportation Program.

(4) *Purpose:* To collect fleet compliance reports to determine compliance status under the Program.

(5) *Type of Respondents:* Covered state government and alternative fuel provider fleets as defined in 10 CFR part 490.

(6) *Estimated number of responses:* 310 annually.

(7) Estimated total burden hours, including recordkeeping hours, required to provide the information is 5 hours.

Statutory Authority: 42 U.S.C. 13251, 13257(o).

Dated: Issued in Washington, DC on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–260 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–Pu

DEPARTMENT OF ENERGY

Submission for OMB Review, Comment Request

AGENCY: Department of Energy.

ACTION: Agency information collection extensions.

SUMMARY: The Department of Energy (DOE) is submitting an information collection package to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1995. The package requests a 3-year extension of its Security information collection (formerly known as Safeguards and Security), OMB Control Number 1910–1800. The package covers collections of information concerning the management and administration of DOE's Government-owned/contractor-operated facilities (GOCO's), offsite contractors, businesses and citizens. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated. These collections provide information concerning the Department's security program. Typical information collected in this package pertains to material control and accountability, security incident investigations, and protection of unclassified and classified documents.

DATES: Comments regarding this information collection package should be submitted to the OMB Desk no later than February 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Submit comments to DOE Desk Officer, Office Information and Regulatory Affairs (OIRA), Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan L. Frey, Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer, IM–11/GTN Bldg, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, (301) 903–3666, or E-mail *susan.frey@hq.doe.gov.* (Also notify Brenda Scheel, Office of Security, SO–1.12/GTN Bldg, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 (301) 903–4098.

SUPPLEMENTARY INFORMATION: The package contains: (1) *Title:* Security; (2) *Current OMB control Number:* 1910–1800; (3) *Type of Respondents:* DOE management and operating contractors, offsite contractors, businesses, and citizens; (4) *Estimated number of Responses:* 5,886; (5) *Estimated Total Burden Hours:* 179,452; (6) *Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources concerning security are managed efficiently and effectively and to exercise management oversight of DOE contractors; (7) *Number of Collections:* This package contains 12 information and/or record-keeping requirements.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Issued in Washington, DC, on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Officer of the Chief Information Officer.

[FR Doc. 03–261 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Submission for OMB Review; Comment Request

AGENCY: Department of Energy.

ACTION: Agency information collection extension.

SUMMARY: The Department of Energy (DOE) has submitted renewals for an additional three years for the information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507(h)(1) and 3506(c) of the paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) A summary of the collection of information, type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information, (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed on or before February 6, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB Desk Officer may be telephoned at (202) 395–7318. (Also, please notify the DOE contact listed below.)

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Room 10102 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the addressee below.)

SUPPLEMENTARY INFORMATION: The information collections submitted to OMB for review were:

(1) *Title:* Personal Property; (2) *Current OMB control Number:* 1910–1000. (3) *Type of Respondents:* DOE management and operating contractors and offsite contractors. (4) *Estimated Number of Responses:* 111; (5) *Estimated Total Burden Hours:* 1,880. (6) *Purpose:* This provides the Department with the information necessary for the management, control, reutilization, and disposal of government personal property. (7) *Number of Collections:* The package contains 3 information and/or recordkeeping requirements.

Statutory Authority: Sections 3507(h) (1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–262 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Policy for Statistical Tables Based on Historical Electric Power Survey Information Collected Under a Pledge of Confidentiality

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement.

SUMMARY: The EIA has established a policy regarding the use of disclosure limitation methods for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. Disclosure limitation methods are used to ensure that sensitive table cell values are suppressed; *i.e.*, withheld from public release. A sensitive data cell value is one that, if publicly disseminated, may be used to closely estimate confidential information that an individual survey respondent reported to EIA.

Under this policy, EIA will use disclosure limitation methods on statistical tables based on aggregated historical electric power survey information collected under a pledge of confidentiality only if the information is currently collected under a pledge of confidentiality. (As of December 2002, electric power information collected under a pledge of confidentiality includes costs of fuels for unregulated plants, tested heat rates, fuel inventories, plant costs and expenses for unregulated plants, monthly electricity sales information reported for energy-only service, and latitude/longitude for electric power facilities.) For information not currently collected under a pledge of confidentiality, EIA will not use disclosure limitation methods for statistical tables derived from the historical electric power survey information previously collected under a pledge of confidentiality.

This policy applies to any information collected in an EIA electric power survey under a pledge of confidentiality during a survey period at least three years prior to the date of its proposed release in a statistical table. The three-year period includes the reporting year (the year for which information is currently being collected) and two prior years where information has been finalized. In accordance with applicable laws and regulations, EIA will continue to not publicly release survey forms collected under a pledge of confidentiality.

This policy is based on the need to provide additional statistical tabulations that will improve and broaden the understanding of the United States electric power industry by releasing additional statistical tabulations. These tables may present information at the national, State, and/or regional levels in various EIA information products. (EIA's electric power information is available on the web at *http://www.eia.doe.gov/.*)

DATES: This policy becomes effective on January 7, 2003.

ADDRESSES: Requests for additional information or questions about this policy should be directed to Dean Fennell. He may be contacted by FAX (202–287–1934), e-mail *(Dean.Fennell@eia.doe.gov),* or telephone (202–287–1744). These contact methods are recommended to expedite contact. His mailing address is Energy Information Administration, EI–53, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0650.

FOR FURTHER INFORMATION CONTACT: Requests should be directed to Mr. Fennell at the address listed above. EIA's electric power information is available on the web at *http://www.eia.doe.gov/.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA conducts surveys to collect information about the electric power industry from companies and organizations involved in the generation, transmission, distribution, and sales of electric power. This survey information is disseminated in a variety of information products and electronic data files used by government and private sector policymakers and analysts.

On October 24, 2002, EIA issued a **Federal Register** notice (67 FR 65345) requesting public comments on a proposed policy regarding the use of disclosure limitation methods for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. A second notice was issued on November 4, 2002 (67 FR 67253) to correct a publication mistake in the date for submission of comments. In the October 24 notice, EIA discussed the reasons for the proposed policy as well as reasons for proposing it. In addition to publishing the notice, EIA sent a copy of the notice to each of its over 6,000 electric power survey respondents.

The proposed policy was based on the need to provide additional statistical tabulations that will improve and broaden the understanding of the electric power industry. These statistical tables will provide electric power information at national, State, and/or regional levels. (An example of this is publishing national level fuel consumption information in EIA's Annual Energy Review, or publishing State or regional level information for fuel consumption, useful thermal output, or generation in reports such as EIA's Electric Power Monthly or Natural Gas Annual.)

II. Discussion of Comments

In response to the **Federal Register** notice and EIA's mailing of the notice to its survey respondents, EIA received 19 sets of comments. Most of the comments were from electric power companies and trade groups.

Of the comments received, nine were in favor of a policy of not using disclosure limitation methods on statistical tables based on historical electric power survey information, nine objected to the proposal, and one commenter did not take a position. After analyzing the comments, EIA decided to propose using disclosure limitation methods on statistical tables based on historical electric power survey information collected under a pledge of confidentiality only if the survey information is currently collected under a pledge of confidentiality. If the historical survey information was collected under a pledge of confidentiality but is not currently collected under such a pledge, EIA will not use disclosure limitation methods on statistical tables based on the aggregated historical information.

The decision is based on the fact that for information not currently collected under a pledge of confidentiality, the public has access to the most recent information in individually-identifiable form. Therefore, the release of statistical tables not subjected to disclosure limitation methods for historical survey information previously collected under a pledge of confidentiality should not cause substantial competitive harm to the position of any survey respondent. Examples of information meeting this criteria include generation and fuel consumption information collected under a pledge of confidentiality prior to 1999 on the Form EIA–867, but the generation and fuel consumption information are currently collected with no pledge of confidentiality.

Following is a summary of the major supporting and opposing arguments received in response to EIA's proposed policy.

General Concerns—Arguments for Release of Aggregated Information Collected Under a Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice generally supported EIA's approach to not using disclosure limitation methods before disseminating information collected under a pledge of confidentiality at an aggregate level in statistical tables after a three-year period. They stated that the release of such information at least three years after collection and aggregated at the State, regional, or national level will adequately safeguard the competitive position of any survey respondent. If an affected survey respondent disagrees, the respondent has the option to request confidential treatment through the DOE's Office of Hearings and Appeals or in court. Further, some stated that disseminating historically confidential information at the State level is especially important as States move into an era characterized by the need for portfolio management of power supply, demand, and related factors. Others believe that the release of aggregated information after a three-year period expands the historical information available and has the potential to benefit information users, researchers, and policymakers.

Other persons argued that the industry has failed to document any specific harm that will arise from the release of EIA aggregated survey information despite the fact that competition has existed in the industry for several years. They also stated that much of the information is already available, that the statistical tables will not have any competitive impact by the time they are released by EIA, and that public policy goals depend on this information.

Some supporters of the release of aggregated information after three years believe that both EIA's enabling statute and the Freedom of Information Act (FOIA) mandate that EIA disseminates its information. They state that the FOIA contains nine exemptions from public disclosure, and only Exemption 4 (which protects against release of confidential commercial or financial information), potentially relates to the type of information collected on EIA's electric power surveys. In fact, one commenter stated that the purpose of FOIA is to promote disclosure, not to justify secrecy.

Another commenter in favor of the release of historical information stated that with the movement toward a more competitive market, it should be clear to all that energy markets can function best in the presence of wide access to information.

Also in support of the proposed policy, many commenters to previous EIA **Federal Register** notices published March 13, 2001 (Vol. 66, No. 49) who opposed the release of individually-reported information believed that EIA could fulfill its statutory duties without disclosure of individual plant level information by disseminating the information in an aggregated form. In addition, several supported a delay in the disclosure of sensitive information to protect against competitive harm.

General Concerns—Arguments Against Release of Aggregated Information Collected Under A Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice opposed EIA's proposal to release information collected under a pledge of confidentiality at an aggregate level after a three-year period. They believe that disclosure even at an aggregate level of competitively sensitive information will harm respondents, the electricity market, and the consumer. In particular, some believe their entities hold market share in certain States and regions. If the number of entities included in the aggregate is small, they believe that their information could be easily discerned. Others understood that the confidential information would remain proprietary even when disseminated at aggregate levels. They stated that EIA is changing its policy on confidentiality.

Some had an issue with the three-year time period. Their concern is that much of the information provided in the responses to the EIA surveys would potentially change little over time. Thus, if the number of entities included in a particular aggregate is small, individually reported information could be discerned. If the information changes little over time, competitive harm could occur with respect to fuel purchase prices and plant operating costs.

One commenter opposed the proposal to release aggregate information collected under a pledge of confidentiality after three years stating that the proposal is too broad and unfounded. The person also stated that the new proposal violates the expectations of companies that have submitted the information in reliance on confidentiality assurances. The person went on to say that the mere passage of time does not ensure that information treated as confidential because of commercial and security concerns no longer need to be treated as confidential. The commenter believes that the proposal is a generalization, which can not be made for all categories of information or for all facilities and companies. Also, companies have provided the information in reliance on EIA assurances, which should not now be withdrawn after the information has been submitted.

EIA's Response to Comments

EIA finds that the comments on the issue are thoughtful and reflect the nature of the tradeoff in ensuring information is available for monitoring and analyzing the electric power industry and markets while at the same time ensuring that information collected under a pledge of confidentiality in EIA's electric power surveys is not released in statistical tables in such a way as to cause potential substantial competitive harm to the survey respondents.

EIA's final policy is to discontinue the use of disclosure limitation methods such as suppression and complimentary suppression for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality only if the information is not currently collected under a pledge of confidentiality. This decision is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry by releasing more aggregated information (State, regional, or national level) while using disclosure limitation methods to ensure the confidentiality of information currently collected under a pledge of confidentiality. The potential disclosure of data that were confidential and older than three years will not have a major impact on the competitiveness of the respondents, as their current data are no longer confidential.

III. Current Actions

The EIA is establishing a policy regarding the use of disclosure limitation methods for information in statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. (Disclosure limitation methods are used to ensure that sensitive table cell values are suppressed; *i.e.*, withheld from public release.) Under this policy, disclosure limitation methods will be used on statistical tables based on aggregated historical electric power survey information collected under a pledge of confidentiality only if the information is

currently collected under a pledge of confidentiality. (As of December 2002, electric power survey information collected under a pledge of confidentiality includes costs of fuels for unregulated plants, tested heat rates, fuel inventories, plant costs and expenses for unregulated plants, monthly electricity sales information reported for energy-only service, and latitude/longitude for electric power facilities.) If the survey information is not currently collected under a pledge of confidentiality, EIA will not use disclosure limitation methods for statistical tables derived from the historical electric power survey information.

This policy would apply to any information collected in an EIA electric power survey under a pledge of confidentiality during a survey period at least three years prior to the date of its proposed release in a statistical table. The three-year period includes the reporting year (the year for which information is currently being collected) and two prior years where information have been finalized. In accordance with applicable laws and regulations, EIA will not publicly release survey forms collected under a pledge of confidentiality.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, December 31, 2002.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 03–259 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–340–003]

ANR Pipeline Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 24, 2002, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 24, 2002:

First Revised Sheet No. 192
First Revised Sheet No. 192 A
First Revised Sheet No. 192B
First Revised Sheet No. 192C

ANR states that the revised tariff sheets are being filed in compliance with the Commission's November 26, 2002 Order in the above-referenced docket in regards to MDQ reductions. ANR Pipeline Company, 101 FERC 61,246 (2002).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–239 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–065]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 31, 2002.

Take notice that on December 23, 2002, ANR Pipeline Company (ANR) tendered for filing and approval Amendments to two Service Agreements between ANR and Wisconsin Public Service Corporation, which revise the MDQ under such Agreements. ANR requests that the Commission accept and approve the agreements to be effective January 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–251 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–091]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

December 31, 2002.

Take notice that on December 27, 2002, CenterPoint Energy Gas Transmission Company (CEGT, formerly Reliant Energy Gas Transmission Company) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 651, to be effective January 1, 2003.

CEGT states that the purpose of this filing is to describe the provisions of a revised negotiated rate transaction between CEGT and TPS Dell, L.L.C. Tariff sheets describing the original negotiated rate transaction (i.e., the transaction being amended by CEGT's filing) were accepted by the Commission in a letter order dated September 27, 2002, in Docket No. RP96–200–085.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–250 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–346–000]

Citizens Communications Company; Notice of Filing

December 31, 2002.

Take notice that on December 27, 2002, Citizens Communications Company (Citizens) filed an Agreement with Vermont Electric Cooperative, Inc. (VEC) for Firm Sales Service, designated as Citizens' Rate Schedule FERC No. 44. Citizens requests waiver of the Commission's prior notice requirements, and an effective date of January 1, 2003 for the service agreement.

Citizens states that copies of this filing were served on VEC and the Vermont Public Service Board. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 17, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–230 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–010]

Colorado Interstate Gas Company; Notice of Refund Report

December 31, 2002.

Take notice that on December 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing its refund report in Docket No. RP01–350–000.

CIG states that the filing and refunds were made to comply with the Commission's order issued on August 5, 2002. CIG states that the refunds were made on November 25, 2002.

CIG states that the refund report summarizes jurisdictional transportation and gathering refund amounts for the period October 1, 2001 through September 30, 2002 pursuant to Article 2.2 of CIG's Stipulation and Agreement as approved in the Commission's August 5, 2002 order.

CIG states that copies of CIG's filing are being mailed to all parties of record in this proceeding and interested states regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 7, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–238 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–218–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 271, to become effective February 1, 2003.

CIG states that the tariff sheet is being filed to remove the five-year term matching cap from the right-of-first-

refusal provisions of CIG's Tariff consistent with the Commission's Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–247 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–022]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2002:

Substitute Original Sheet No. 11O
Substitute Original Sheet No. 11P
Substitute Original Sheet No. 11R
Substitute Original Sheet No. 11S

CIG states that these tariff sheets are being filed to comply with the Commission's order issued November 27, 2002 in this proceeding and to remove the Maximum Daily Quantity reduction provision applicable to these negotiated rate transactions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–249 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–219–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 26, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective February 1, 2003:

Fourth Revised Sheet No. 20
Second Revised Sheet No. 114
Fourth Revised Sheet No. 151
Third Revised Sheet No. 152
First Revised Sheet No. 152A
Fourth Revised Sheet No. 154
Fourth Revised Sheet No. 155
Third Revised Sheet No. 169
First Revised Sheet No. 169A
First Revised Sheet No. 186

Discovery states that this filing is made in part for administrative purposes and in part as a housekeeping matter to clarify, update and clean up several items in Discovery's tariff.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: January 7, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–248 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District California; Notice of Public Meetings

December 31, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the El Dorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

January 13 Recreation Workgroup—9 am—4 pm; January 14 Geomorphology sub-workgroup—9 am—4 pm; January 15 Plenary Meeting—9 am—4 pm; and January 16 Plenary Meeting—9 am—4 pm.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–232 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–214–000]

Kinder Morgan Interstate Gas Transmission LLC Docket No. RP03–214–000; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Third Revised Sheet No. 37, to be effective January 23, 2003.

KMIGT states that the purpose of this filing is to revise Section 18.5 of KMIGT's General Terms and Conditions (GT&C) in order to eliminate the five-year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–244 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–007]

Northern Natural Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets in compliance with the Commission's order issued on November 21, 2002, in Docket No. RP00–404, *et al.* (Order):

Seventh Revised Sheet No. 1
Ninth Revised Sheet No. 2
61 Revised Sheet No. 53
Fourth Revised Sheet No. 55
Third Revised Sheet No. 111
Fifth Revised Sheet No. 115
Third Revised Sheet No. 125
Third Revised Sheet No. 133
Fifth Revised Sheet No. 142
Original Sheet No. 142A
Original Sheet No. 142B
Original Sheet No. 142C
Original Sheet No. 142D
Original Sheet No. 142E
Fifth Revised Sheet No. 146
Fourth Revised Sheet No. 154
Tenth Revised Sheet No. 201
Eighth Revised Sheet No. 220
Sixth Revised Sheet No. 226
Sixth Revised Sheet No. 252
Third Revised Sheet No. 256
Seventh Revised Sheet No. 258
Seventh Revised Sheet No. 259
Second Revised Sheet No. 260A
Fourth Revised Sheet No. 263C
Fourth Revised Sheet No. 263D
Fourth Revised Sheet No. 266
Fourth Revised Sheet No. 269
Second Revised Sheet No. 270
Second Revised Sheet No. 292A
Third Revised Sheet No. 304
Second Revised Sheet No. 305
Original Sheet No. 305A
Original Sheet No. 305B
Original Sheet No. 306
Sheet No. 307
Second Revised Sheet No. 432
Sheet No. 433
Second Revised Sheet No. 443
First Revised Sheet No. 444
Sheet No. 445

Northern states that this filing is Northern's compliance filing under Order No. 637.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–235 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–451–002]

Northern Natural Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet in compliance with the Commission's order issued on November 21, 2002 in Docket No. RP00–404–000, *et al.* (637 Order):

Substitute First Revised Sheet No. 269B

In accordance with the Commission's 637 Order, Northern states that it is filing the above-referenced tariff sheet to revise Section 32 (L) (Imbalance Trading) of the General Terms and Conditions of Northern's FERC Gas Tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–240 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110]

Pacific Gas and Electric Company; Notice of Filing and Requesting Comments

December 31, 2002.

On November 29, 2002, the National Marine Fisheries Service (NMFS) filed with the Commission its final biological opinion for a proposed license amendment for the Potter Valley Project (PVP; FERC No. 77–110). The proposed amendment involves changes in the minimum flow release requirements at the project, consisting of increased releases to the Eel River, which would result in overall decreased diversions to the Russian River. The PVP is licensed to Pacific Gas and Electric Company (PG&E) and is located in Lake and Mendocino counties, California.

The NMFS biological opinion finds that the proposed increase in minimum flow releases to the Eel River is likely to jeopardize the continued existence of southern Oregon/northern California coho salmon, California coastal chinook salmon, and California steelhead and likely to adversely modify designated critical habitat in the Eel River Basin. With respect to salmonids in the Russian River, it is the NMFS' biological opinion that the proposed action is not likely to jeopardize listed species or adversely modify designated critical habitat. The biological opinion includes a ''Reasonable and Prudent Alternative,'' which the NMFS believes should avoid jeopardy to listed species.

The purpose of this notice is to request comments on the NMFS biological opinion, including its ''Reasonable and Prudent Alternative.'' Copies of the biological opinion are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Comments on the biological opinion should be filed with the Commission within 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For additional information concerning the foregoing, please contact John Mudre at (202) 502–8902.

Comments due: January 30, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–233 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–14–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 80 and Second Revised Sheet No. 81. The proposed effective date of the tariff sheets is February 1, 2003.

Pine Needle states that the purpose of this filing is to comply with the Commission's ''Order Accepting Tariff Filing and Requiring Compliance Filing'' issued on November 27, 2002, in the referenced docket, in which the Commission directed Pine Needle to refile, within 30 days, revised tariff sheets to modify its right of first refusal provisions.

Pine Needle states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–242 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2355–008, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Filings

December 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern California Edison Company

[Docket Nos. ER97–2355–008, ER98–2322–003 and ER97–2355–006]

Take notice that on December 23, 2002, Southern California Edison Company (SCE) tendered for filing its Wholesale Distribution Access Tariff (WDAT) in compliance with Opinion Nos. 458 and 458-A rendered in the aforementioned dockets.

SCE states that copies of this filing were served upon those persons whose names appear on the official Service List for these dockets.

Comment Date: January 13, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–108–008]

Take notice that on December 23, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revisions to Attachments S (Independent Market Monitoring Plan) and S–1 (Independent Market Monitor Retention Agreement) of the Midwest ISO Open Access Transmission Tariff. The Midwest ISO states that the revisions enhance the independent status of the Independent Market Monitor, and believe they are in compliance with the Commission's November 22, 2002 Order in the same proceeding.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO states that they have served a copy of this filing electronically, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 13, 2003.

3. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER02–2126–005]

Take notice that on December 20, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a revised unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power). Con Edison stated that the filing was made in compliance with the Order Accepting for Filing, with Modifications, Proposed Interconnection Agreement, issued on November 20, 2002 in this proceeding. The revised Agreement has a designated effective date of September 1, 2002.

Con Edison stated that copies of the filing were served upon all parties to this proceeding.

Comment Date: January 13, 2003.

4. ISO New England, Inc.

[Docket No. ER02–2330–004]

Take notice that on December 20, 2002, ISO New England Inc. submitted a compliance filing providing a status report on the implementation of Standard Market Design in New England.

Comment Date: January 10, 2003.

5. New York Independent System Operator, Inc.

[Docket No. ER03–13–001]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's November 22, 2002 order in the above-captioned proceeding.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 13, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER03–312–000]

Take notice that on December 23, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing unexecuted copies of: (i) A Wholesale Distribution Tariff (WDT) Service Agreement (Service Agreement) between PG&E and Hercules Municipal Utility (HMU); and (ii) an Interconnection Agreement (IA) between PG&E and HMU.

The Service Agreement is submitted pursuant to the PG&E wholesale distribution tariff and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. The IA provides the terms and conditions for the continued interconnection of the Electric Systems of HMU and PG&E.

PG&E has requested certain waivers for a proposed effective date of January 1, 2003. Copies of this filing have been served upon HMU, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: January 13, 2003.

7. New York State Electric & Gas Corporation

[Docket No. ER03–313–000]

Take notice that on December 23, 2002 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative).

This rate filing is made pursuant to Section 1 (c) and Section 3(a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2003. NYSEG also states that copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 13, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–316–000]

Take notice that on December 23, 2002 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 194 filed with FERC corresponding to an Agreement with the Steuben Rural Electric Cooperative, Inc. (the Cooperative).

This rate filing is made pursuant to Section 2 (a) through (c) of Article IV of the December 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the tap of NYSEG's South Addison to Presho 34.5 transmission line. Such tap of NYSEG's transmission line connects to the Cooperative's Sullivan Road Substation and is for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2003. NYSEG states that copies of the filing were served upon the Steuben Rural Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 13, 2003.

9. PacifiCorp

[Docket No.ER03–317–000]

Take notice that on December 23, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 *et seq.*of the Commission's Rules and Regulations, a revised Attachment J to its Open Access Transmission Tariff calculating load ratio shares applicable to PacifiCorp's Network Integration Transmission Service Customers.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and PacifiCorp's Network Customers.

Comment Date: January 13, 2003.

10. PacifiCorp

[Docket No. ER03–318–000]

Take notice that on December 23, 2002, PacifiCorp tendered for filing in accordance with 18 CFR 35 *et seq.* of the Commission's Rules and Regulations, a Notice of Cancellation of Supplement No. 20 to Service Agreement No. 65 under PacifiCorp's 1st Revised Electric Tariff Vol. No. 11 for service between PacifiCorp and Hinson Power Company.

PacificCorp states that copies of this filing were supplied to Hinson Power Company, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: January 13, 2003.

11. International Falls Power Company

[Docket No. ER03–319–000]

Take notice that on December 23, 2003, International Falls Power Company (IFPC) tendered for: (1)Filing a petition for acceptance of an initial rate schedule authorizing IFPC to make wholesale sales of power at market-based rates; (2) requests for waivers and blanket authority; and (3) a request for an effective date for its market-based rate authorization as of January 1, 2003.

Comment Date: January 13, 2003.

12. NM Colton Genco LLC, NM Mid-Valley Genco LLC, NM Milliken Genco LLC

[Docket Nos. ER03–320–000, ER03–321–000, and ER03–322–000]

Take notice that on December 23, 2002, NM Colton Genco LLC (NM Colton), NM Mid-Valley Genco LLC (NM Mid-Valley) and NM Milliken Genco LLC (NM Milliken) (together, Applicants), requested the Commission to: (1) Accept for filing Applicants' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity, and certain ancillary services; and (2) grant Applicants such waivers and authorizations necessary to transact at market-based rates.

Comment Date: January 13, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–323–000]

Take notice that on December 23, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing the Midwest ISO Market Mitigation Measures as Attachment S–2 to the Midwest ISO Open Access Transmission Tariff.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO states it has served a copy of this filing electronically, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other

interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 13, 2003.

14. PJM Interconnection, L.L.C.

[Docket No. ER03–324–000]

Take notice that on December 20, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing: (1) An unexecuted network integration transmission service agreement for the Borough of Mont Alto (Mont Alto); and (2) revisions to Attachment H–11 of the PJM open access transmission tariff (PJM Tariff) to reflect the settlement credit and resulting rate for network integration transmission service for Mont Alto in the Allegheny Power (Allegheny) zone. The network service agreement reflects an ''Other Supporting Facilities'' charge for Mont Alto calculated by Allegheny and based upon direct assignment of the distribution facilities used to provide service to Mont Alto.

PJM requests waiver of the Commission's notice requirement to allow an effective date of December 1, 2002 for the filing, to reflect the date upon which Mont Alto began taking network integration transmission service under the PJM Tariff.

PJM states that it served a copy of its filing on Mont Alto and the Pennsylvania Public Utilities Commission.

Comment Date: January 10, 2003.

15. Ameren Services Company

[Docket No. ER03–326–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Marketing pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

16. Wisvest Corporation, Wisvest-Connecticut, LLC, PSEG Fossil LLC

[Docket No. ER03–327–000]

Take notice that on December 23, 2002, PSEG Power Connecticut LLC and its parent PSEG Fossil LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) Original Rate Schedule FERC No. 1 in compliance with Wisvest Corporation, *et al.*, 101 FERC § 61,166, effective as of December 6, 2002.

Comment Date: January 13, 2003.

17. New York Independent System Operator, Inc.

[Docket No. ER03–328–000]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT). The proposed filing would revise provisions regarding customer challenges to settlements and the NYISO's reconciliation of final settlement corrections.

The NYISO has requested that the Commission make the filing effective on January 10, 2003. NYISO also states that a copy of this filing was served upon all signatories of the NYISO's OATT and Services Tariff.

Comment Date: January 13, 2003.

18. NorthWestern Energy, a division of NorthWestern Corporation

[Docket No. ER03–329–000]

Take notice that on December 23, 2002, NorthWestern Energy, a division of NorthWestern Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession adopting all applicable rate schedules, service agreement, tariffs and supplements thereto previously filed with the Commission by NorthWestern Energy, L.L.C. (formerly known as The Montana Power Company).

Comment Date: January 13, 2003.

19. Sunflower Electric Power Corporation

[Docket No. NJ03–1–000]

Take notice that on December 23, 2002, Sunflower Electric Power Corporation (Sunflower) submitted a petition for declaratory order granting reciprocity approval of its amended Open Access Transmission Tariff and a request for waiver of the filing fee associated with such petitions.

Comment Date: January 21, 2003.

20. Entergy Services, Inc.

[Docket Nos. OA96–158–006 and OA97–657–003]

Take notice that on December 23, 2002, Entergy Services, Inc. (Entergy) on behalf of the Entergy Operating Companies, tendered for filing an amendment to its December 2, 2002 compliance filing submitted in the above-referenced dockets pursuant to the Federal Energy Regulatory Commission's (Commission) order in Entergy Services, Inc., 101 FERC § 61,141. Entergy filed Substitute First Revised Sheet No. 118 to replace First Revised Sheet No. 118 to detail Entergy's stated rate for Schedule No. 1 charges provided under Entergy's Open Access Transmission Tariff. The accompanying blackline to Substitute First Revised Sheet No. 118 also corrects a typographical error contained in the blackline accompanying First Revised Sheet No. 118.

Comment Date: January 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–231 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–015]

Texas Gas Transmission Corporation; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Texas Gas Transmission

Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Seventh Revised Sheet No. 40, to become effective November 7, 2002.

Texas Gas states that the purpose of this filing is to comply with conditions set forth in the Commission's delegated order dated December 6, 2002.

Texas Gas states that copies of the revised tariff sheet are being mailed to all parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–236 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–014, RP01–253–007, CP01–34–004, CP01–103–003, CP01–368–003, and RP02–171–005]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report Filing

December 31, 2002.

Take notice that on December 20, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered the refund report filing in Docket Nos. RP01–245–000, *et al.*

Transco states that on November 27, 2002, Transco submitted refunds (or surcharges) to all affected customers in the referenced proceedings.

Transco states that it has served copies of Attachment 1 to the filing and certain summary schedule (Appendix A to the filing) on the recipients of the refund (or surcharge) and their respective State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 9, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–237 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–13–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Fourth Revised Sheet No. 374O and First Revised Sheet No. 374O.00. The proposed effective date of the tariff sheets is February 1, 2003.

Transco states that the purpose of this filing is to comply with the Commission's ''Order Accepting Tariff Filing and Requiring Compliance Filing'' issued on November 27, 2002, in the referenced docket, in which the Commission directed Transco to refile, within 30 days, revised tariff sheets to modify its right of first refusal provisions.

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–241 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–216–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

December 31, 2002.

Take notice that on December 23, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Twenty-First Revised Sheet No. 28, to be effective December 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased

from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco states that this filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third revised Volume No. 1 Tariff.

Transco further states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 7, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–245 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–2–001]

Transwestern Pipeline Company; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 27, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Eleventh Revised Sheet No. 5B.03, to become effective November 1, 2002.

Pursuant to Section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern states that it is filing a corrected tariff sheet, which sets forth the corrected TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2002. Transwestern states that the tariff sheet Eleventh Revised Sheet No. 5B.03, previously submitted in its October 1 filing in Docket No. RP03–2–000 reflected incorrect rates for three Current Firm Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–243 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–05–000]

Washington Gas Light Company; Notice of Petition for Rate Approval

December 31, 2002.

Take notice that on December 9, 2002, Washington Gas Light Company (WGLC) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

WGLC proposes to establish a demand charge of $2.1841 per Dekatherm for the maximum daily quantity pursuant to its last approved rate in PR99–14–000.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before January 15, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–234 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–33–000]

Wellco Services, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 2002.

Take notice that on December 26, 2002, Wellco Services, Inc., a California corporation (Applicant), with its principal executive office at 650 Bercut Drive, Suite C, Sacramento, California 95814, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states it will be engaged directly and exclusively in the business of operating several eligible facilities and will satisfy the obligation of selling electric energy at wholesale through its contractual relationship with the owners of such eligible facilities which sell electric energy exclusively at wholesale.

Applicant states that copies of the application have been served upon the California Public Utility Commission and the Securities and Exchange Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–229 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–33–000, CP03–34–000 and CP03–35–000]

Wyckoff Gas Storage Company, LLC; Notice of Application

January 2, 2003.

On December 23, 2002, Wyckoff Gas Storage Company, LLC, (Wyckoff), located at 1776 Yorktown, Houston, Texas, 77056, filed an application in the above referenced dockets, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Parts 157 and 284 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations for: (1) A certificate of public convenience and necessity authorizing Wyckoff to develop, construct, own, operate, maintain, and abandon a natural gas storage facility and other associated and appurtenant facilities capable of storing 6 BCF of working gas; (2) a blanket certificate pursuant to part 284, Subpart G, authorizing Wyckoff to provide storage services on behalf of others; (3) a blanket certificate pursuant to part 157, Subpart F, authorizing Wyckoff to develop, construct, acquire, own, operate, maintain, and abandon additional facilities following construction of the facilities for which authorization is being sought under part 157, Subpart A; and (4) authorization to provide storage services at market-based rates. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Wyckoff states that it does not have market power in any relevant product or geographic market for storage services, and has submitted a market power study with its application, in support of its position that it lacks market power. Pursuant to its request for market-based rates, Wyckoff requests that the Commission waive (1) the requirement of 18 CFR 157.14 with respect to Exhibits K, L, N, and O of the application; (2) the accounting and reporting requirements of 18 CFR part 201 and 18 CFR 260.2; and the requirement to file the rate information required by 18 CFR 157.6(b)(8).

The storage facilities which Wyckoff seeks to construct and operate will be located in Steuben County, New York. The storage facilities will consist of two depleted natural gas reservoirs and two pipelines, totaling 11.5 miles, to interconnect the facilities with the existing pipeline systems of Tennessee Gas Pipeline, Dominion Transmission, Inc., and Columbia Gas Transmission Company. The proposed storage facility has a maximum gas volume of 10 BCF, of which 6 BCF is working gas, a maximum deliverability of 400 MMCF/d, and maximum injection capability of 250 MMCf/d. The facility requires the construction of 6 new injection/withdrawal wells, the re-completion of 3 existing wells, 9,470 horsepower compression. Wyckoff will offer firm and interruptible storage services on an open access and non-discriminatory basis.

Any questions regarding this application should be directed to Edmund A. Knolle, Executive Vice President, Wyckoff Gas Storage Company, LLC, 1776 Yorktown, Houston, Texas, 77056, (713) 961–3204.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 23, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–295 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–217–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourth Revised Sheet No. 62, to become effective February 1, 2003.

WIC states that the tariff sheet is being filed to remove the five-year term matching cap from the right-of-first-refusal provisions of WIC's Tariff consistent with the Commission's Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. *Intervention Date:* January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–246 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–182–001, et al.]

Phoenix Energy Associates, L.L.C., et al.; Electric Rate and Corporate Filings

December 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Phoenix Energy Associates, L.L.C.

[Docket No. ER03–182–001]

Take notice that on December 23, 2002, Phoenix Energy Associates, L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) in response to a deficiency letter from the Commission, an amendment to its Rate Schedule, a contact number for the corporation and a waiver of the effective date for the Rate Schedule.

Comment Date: January 13, 2003.

2. XL Weather & Energy Inc.

[Docket No. ER03–330–000]

Take notice that on December 23, 2002, XL Weather & Energy Inc. (XL Weather) submitted for filing a revised market-based rate schedule (Rate Schedule) reflecting its name change from Element Re Capital Products Inc. XL Weather requests a waiver of the 60-day prior notice requirement to allow its revised Rate Schedule to become effective as of December 11, 2002

Comment Date: January 13, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–331–000]

Take notice that on December 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the Appendix of Attachment K of the PJM Open Access Transmission Tariff and

Schedule 1 of the Amended and Restated Operating Agreement to modify the provisions relating to the determination of eligibility to receive Operating Reserves credits during Maximum Generation Emergency conditions.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 14, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–332–000]

Take notice that on December 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the governance provisions of the PJM Operating Agreement to: (1) Add two new members to the PJM Board of Managers (Board); (2) establish a Nominating Committee to choose candidates for Board vacancies; and (3) permit election of Board members and the Chair and Vice Chair of the Members Committee by a simple majority of voting sectors.

PJM requests an effective date of December 25 for the amendments. PJM also states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 14, 2003.

5. Southern California Edison Company

[Docket No. ER03–333–000]

Take notice that on December 24, 2002, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Service Agreement For Wholesale Distribution Service (Agreement) between SCE and SCE QF Resources. SCE respectfully requests an effective date of December 25, 2002 for the revisions.

The Agreement serves to provide the terms and conditions under which SCE provides Distribution Service under SCE's FERC Electric Tariff, Original Volume No. 5.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCE QF Resources.

Comment Date: January 14, 2003.

6. American Transmission Company LLC

[Docket No. ER03–334–000]

Take notice that on December 24, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of November 24, 2002.

Comment Date: January 14, 2003.

7. Ameren Services Company

[Docket No. ER03–335–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Services between ASC and Duke Energy Trading and Marketing, L.L.C. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Duke Energy Trading and Marketing, L.L.C. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

8. Ameren Services Company

[Docket No. ER03–336–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Services between ASC and Ameren Energy. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

9. Bangor Hydro-Electric Company

[Docket No. ER03–337–000]

Take notice that on December 23, 2002 Bangor Hydro-Electric Company (Bangor Hydro) submitted for filing, pursuant to section 205 of the Federal Power Act, an executed Entitlement and Firm Energy Agreement between Bangor Hydro and Constellation Power Source, Inc. (CPS).

Bangor Hydro states that copies of this filing were served upon CPS, Constellation Power Source Maine, LLC, the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: January 13, 2003.

10. Southern California Edison Company

[Docket No. ER03–338–000]

Take notice that on December 23, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6, to reflect (1) the annual update of the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment; (2) the inclusion in the TO Tariff of rates for transmission service applicable to certain specified existing transmission contracts; (3) the Commission's Opinion No. 458-A in Docket No. ER97–2355–002; and (4) SCE's revised interconnection procedures which were accepted by the Commission's June 4, 2002 order in SCE's Docket Nos. EL00–95–025 and EL00–98–024.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the service list in Docket No. ER97–2355–002, the Cities of Azusa, Banning, Colton, Riverside, California, the Department of Water and Power of the City of Los Angeles, California, and all Scheduling Coordinators certified by the California Independent System Operator.

Comment Date: January 13, 2003.

11. San Diego Gas & Electric Company

[Docket No. ER03–339–000]

Take notice that on December 23, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) Original Volume No. 7 to its Transmission Owner Tariff, superseding Volume No. 6 in its entirety. Volume No. 7 incorporates changes resulting from prior Commission orders that accepted for filing SDG&E's revised generator interconnection procedures, revised Reliability Must Run rates, and Supplemental Transmission Surcharge Rates for upgrades to its Imperial Valley-La Rosita transmission line and the costs of increased security for its transmission system. Along with these approved changes, SDG&E has eliminated certain rate schedules and added a new schedule with the approval of the California Public Utilities Commission, eliminated references to the California Power Exchange, eliminated Ancillary Services it no longer offers since divestiture of its generation assets, and updated the contact information for regulatory filings.

SDG&E requests that the Commission waive the sixty-day notice requirement and establish an effective date of December 31, 2002 for Volume No. 7.

SDG&E states that copies of the filing have been served on the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: January 13, 2003.

12. Calpine PowerAmerica—OR, LLC, Calpine Power America—CA, LLC

[Docket Nos. ER03–341–000 and ER03–342–000]

Take notice that on December 26, 2002, Calpine PowerAmerica—CA, LLC tendered for filing, under section'205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: January 16, 2003.

13. Aquila, Inc.

[Docket No. ER03–344–000]

Take notice that on December 27, 2002, Aquila, Inc. (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission Regulations, 18 CFR part 35, an Interconnection Agreement between Aquila, Inc. d/b/a WestPlains Energy-Kansas and Russell Municipal Power and Light dated as of December 9, 2002. The Interconnection Agreement is filed as Service Agreement No. 104 to Aquila FERC Electric Tariff, Third Revised Volume No. 26.

Comment Date: January 17, 2003.

14. New England Power Pool

[Docket No. ER03–345–000] Take notice that on December 27, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted changes to Appendix E to Market Rule 1 (Appendix E), entitled ''Load Response Program.'' Appendix E has been revised to change the basis for allocating to Participants the costs of the NEPOOL Load Response Program from Load Obligation to Network Load. NEPOOL has requested that the proposed changes become effective February 25, 2003 for transactions on and after the applicable effective dates set forth in Market Rule 1 and Appendix E (the SMD Effective Date and the effective date for the Day-Ahead Demand Response Program).

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: January 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–296 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–9]

Availability of FY 01 Grant Performance Reports for State of North Carolina and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of the state air pollution control program at North Carolina Department of Environment and Natural Resources, and the local program at Memphis-Shelby County Health Department, Tennessee. These evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. Evaluations for the other seven states and 15 local governments which have air pollution control programs were published November 18, 2002.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Rayna Brown (404) 562–9093. She may be contacted at the above Region 4 address.

Dated: December 23, 2002.

Russell L. Wright, Jr.,

Assistant Regional Administrator, Office of Policy and Management, Region 4.

[FR Doc. 03–284 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7436–4]

Preliminary Findings of Informal Review of State of Michigan's Approved Clean Water Act Section 404 Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This document announces EPA's preliminary finding that, at this time, formal program withdrawal proceedings should not be initiated for Michigan's approved Clean Water Act section 404 permit program.

DATES: Comments on this document must be received in writing by March 10, 2003.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan Section 404 Program Review, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet Email Address: *elston.sue@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sue Elston, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6115. The Report containing EPA's preliminary findings is available via the Internet at the following location: *http://www.epa.gov/region*5/water/wshednps/pdf/mi_404_program_review.pdf. In addition, a hard copy of the information supporting today's notice is available for review at EPA Region 5, 77 West

Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, 702 Kalamazoo Street, Lansing, Michigan; Olson Library, Northern Michigan University, 1401 Presque Isle Avenue, Marquette, Michigan; Otsego County Library, 700 S. Otsego Avenue, Gaylord, Michigan; and at Brandner Library, Schoolcraft College, 18600 Haggerty Road, Livonia, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886–6115, in Lansing call (517) 373–9489, in Marquette call (906) 227–2117, in Gaylord call (989) 732–5841, and in Livonia call (734) 462–4440.

SUPPLEMENTARY INFORMATION: On October 16, 1984, EPA approved the regulatory permitting program that the State of Michigan had submitted pursuant to the requirements and guidelines contained in subsections 404(g) and 404(h) of the Clean Water Act. 33 U.S.C. 1344(g) and (h). (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to subsection 404(g) of the CWA unless that program does not meet the requirements of subsection 404(h) of the CWA, and EPA then stated that it had determined that the program submitted by the State of Michigan met those statutory requirements. The components of the approved program are stated at 40 CFR 233.70 . When EPA initially approved the program, Michigan did not have authority to carry out the program in Indian lands. EPA now concludes, as set forth more fully in the Report, that Michigan remains without authorization to carry out the program in Indian lands, which EPA defines to be the same as Indian Country as defined by statute (18 U.S.C. 1151).

The Michigan state agency authorized in 1984 to administer the approved section 404 program was the Department of Natural Resources. Later, the State of Michigan reorganized its agencies and transferred authority to administer the approved section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997). The State of Michigan was the first state in the nation, and currently is one of only two states, to be authorized to administer a CWA section 404 permit program within its borders.

Recently EPA decided to perform an informal review of Michigan's approved section 404 program and the program's administration by MDEQ. EPA so decided, among other reasons, because since 1984 there have been a number of changes to the relevant federal and state statutes and regulations, and because a body of State of Michigan judicial and administrative opinions relevant to permitting under the section 404 program had developed. In addition, in recent years EPA has received a number of comments and complaints about Michigan's administration of the approved section 404 program. Among these was the February 1997 submission by the Michigan Environmental Council and the Lone Tree Council which requested that EPA either ensure reform of Michigan's section 404 program or withdraw approval of the section 404 program. EPA responded that it was treating the February 1997 request as a petition to withdraw, and committed to performing an informal review of that petition's allegations, as provided for by 40 CFR 233.53(c)(1). See documents published at 62 FR 14846, March 28, 1997, and 62 FR 61173, 61174, November 14, 1997. The federal regulations allow EPA to conduct an informal review of allegations made in a petition to withdraw a section 404 program approval, 40 CFR 233.53(c).

In deciding to informally review Michigan's section 404 program, however, EPA decided to comprehensively review all aspects of Michigan's administration of the section 404 program—both with respect to permit processing and permit decision making and with respect to enforcement of the provisions of CWA section 404 and section 404 permits issued by MDEQ—and to comprehensively review the adequacy of Michigan's current legal authorities which establish and embody Michigan's section 404 program. Thus, EPA did not limit itself to reviewing the few matters of concern mentioned in the petition submitted by the Michigan Environmental Council and the Lone Tree Council.

The Regional Administrator of Region 5, EPA, informed the Director of MDEQ of the commencement of the section 404 program review in a letter of January 22, 1998.

To perform its program review, EPA requested that the State of Michigan provide an updated program description (40 CFR 233.11); a new Attorney General's Statement confirming that state laws and regulations provide adequate authority to administer the section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. The State of Michigan submitted these materials to EPA in June 1999, and submitted new and updated information to EPA between June 1999 and the date of this Notice.

As well as reviewing and analyzing the documents submitted by the State of Michigan, during its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999, visiting all thirteen MDEQ district offices and the central MDEQ office in Lansing, Michigan. EPA also conducted numerous interviews of MDEQ personnel in the field and central offices. Additionally, EPA reviewed most of MDEQ's written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved state program. Also as part of its program review, EPA consulted with offices of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers which interact with MDEQ during its administration of the program. Finally, during January and May of 1999 EPA held four availability sessions to receive comments from interested persons.

EPA now has completed its review and analysis of all materials. EPA has preliminarily concluded that the review findings do not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but do warrant corrective action on the State's part. In arriving at this conclusion, EPA analyzed whether the circumstances for program withdrawal which are set forth at 40 CFR 233.53(b) exist and, with respect to those areas of concern to EPA, whether the State of Michigan has indicated its willingness to take timely corrective actions to address EPA's concerns. In performing the program review, EPA also reviewed the criteria for initial section 404 program approval which are set forth in subsection 404(h) of the CWA.

EPA has found both deficiencies and strengths in Michigan's legal authorities establishing the approved section 404 program and in the program's administration by MDEQ. These strengths, deficiencies, and proposed corrective actions are identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program,* and other documents that are contained in the public docket that supports this Notice. To address the deficiencies, EPA will be requesting that the State of Michigan perform certain corrective actions; EPA already has consulted with the State of Michigan about the nature of those

corrective actions. The corrective actions that EPA has identified to date are described in general terms elsewhere in this Notice and supporting documents, although those corrective actions may be modified based on future experience and the specifics of the corrective actions must still be defined and finalized. EPA expects that certain corrective actions may be implemented through regulatory action by MDEQ, but that other corrective actions will require action by the Michigan legislature. EPA and the State of Michigan also have agreed on a tentative schedule for implementing the identified corrective actions, although we expect that modifications to this schedule likely will occur in the future. If adequate corrective actions are not taken by the State of Michigan in a timely manner, EPA will reconsider whether formal withdrawal proceedings, as outlined in subsection 404(i) of the CWA and 40 CFR 233.53(c), should be commenced. A summary of the most significant findings of the program review follows.

Through its review of the State of Michigan's legal authorities, EPA has determined that the State's laws and regulations are, for the most part, consistent with section 404 of the Clean Water Act, but has identified deficiencies in a few specific areas, resulting in a preliminary conclusion by EPA that the State does not have legal authority fully consistent with section 404 of the Clean Water Act and the State's implementation of the section 404 program is not entirely consistent with the requirements of 40 CFR part 233.

The scope of regulatory jurisdiction granted to MDEQ by Michigan law is one area of concern for EPA. In many Michigan counties MDEQ has no jurisdiction over a non-contiguous wetland even if that wetland is ecologically significant or large (unless MDEQ has individually determined that the wetland has essential natural resource value). EPA acknowledges that the extent of federal CWA jurisdiction over isolated wetlands recently was limited by the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 121 S.Ct. 675 (2001) *(SWANCC),* but the precise CWA jurisdictional limitation resulting from SWANCC remains unclear. For that reason EPA remains concerned that Michigan's jurisdiction over non-contiguous wetlands is narrower than is federal CWA jurisdiction over isolated wetlands, even post-*SWANCC.* The State is proposing completion of a statewide wetland inventory, which upon completion in each county, will authorize MDEQ to assert jurisdiction over all non-contiguous wetlands in that county which are larger than five acres.

Another area of concern is that Michigan law appears to exempt a wider range of activities than does the CWA under subsection 404(f) of the CWA, including exemptions for discharges occurring as part of certain agricultural activities, discharges related to drain creation and improvement, and discharges associated with iron and copper mining tailings basins. The State has agreed to seek statutory amendments and the promulgation of administrative rules to address these issues.

EPA's examination of Michigan law included review of MDEQ's authorities and procedures for issuing permits. MDEQ issues section 404 and State permits for activities in waters of the United States under two different state statutes: Part 301 and Part 303 of the Natural Resources and Environmental Protection Act. EPA has several concerns with regard to MDEQ's permitting authority. The first concern is that MDEQ may not have clear authority to require all permit conditions required under federal law, and may not have clear authority to revoke and modify issued permits in all situations provided for by federal law. The State has agreed to promulgation of administrative rules to resolve these concerns. EPA also considered the Michigan statutory provision which directs that a permit under Part 303 shall issue within 90 days of a triggering event, and found this provision does not pose an impediment to MDEQ's proper implementation of the section 404 program.

Michigan law also fails to require that MDEQ incorporate the section 404(b)(1) guidelines (or state environmental criteria which are equivalent to the section 404(b)(1) guidelines) into its permit decision making processes. The criteria in the section 404(b)(1) guidelines as to which MDEQ-issued permits are not explicitly required to meet include application of a proper feasible and prudent alternatives analysis, application of the correct water dependency test, a bar on issuing permits which will jeopardize federally threatened or endangered species or their critical habitats, and a bar on issuing permits which will result in significant degradation of waters of the United States. The State has already promulgated administrative rules that address many of these concerns, and has agreed to promulgate rules to address the remaining issues.

EPA's review of contested case decisions issued over the years by MDEQ's Office of Administrative Hearings found that final agency decisions frequently have failed to interpret and apply Michigan law in a manner that is consistent with the federal requirements for administering a section 404 program; the result has been the issuance of permits—which constitute section 404 permits—for activities which have not been subjected to proper analyses for water dependency, satisfaction of the section 404(b)(1) guidelines, and other federal criteria, thereby undermining the State's ability to administer a program which meets the terms of section 404(h) of the CWA. For these reasons, EPA has found that certain changes must be made to some Michigan statutory provisions and administrative rules in order to make them more clearly consistent with federal law. MDEQ has acknowledged EPA's concerns and has proposed what appear to be effective corrective actions to resolve these concerns. Some of these corrective actions already have been taken by MDEQ, while others are proposed for the future.

With regard to MDEQ's administration of the section 404 program, the program review found that, in general, MDEQ is doing a good job. MDEQ is operating its regulatory program in a manner consistent with the State Program Regulations found at 40 CFR part 233. The majority of permit files which EPA reviewed were found to contain the necessary documentation supporting the permit decision. The State's general permit program was found to be consistent with the federal requirements for general permits. MDEQ's permit application process was found to be consistent with the requirements in the federal regulations. MDEQ is including appropriate conditions in its permits to ensure compliance with the section 404(b)(1) guidelines and applicable water quality standards, and the duration of permits issued is consistent with federal requirements.

This program review did, however, identify several problems with MDEQ's administration of its section 404 permit program. The program review identified a need for MDEQ, USFWS and EPA to develop a procedure regarding how the agencies will coordinate when a potential project may have some effect on a federally threatened or endangered species or critical habitat.

The EPA has identified the need for MDEQ to modify its public notice procedures to make them consistent with 40 CFR 233.32. EPA found that MDEQ public notice procedures do not ensure that interested members of the public always have sufficient

opportunity to submit comments in response to public notices nor do the state's public notice procedures include providing public notices by mail to all interested parties, as required by the regulations. In order to partially address this concern, the state has implemented an internet based public notice system that makes all public notices available on the MDEQ website. EPA and MDEQ will be discussing additional corrective actions that need to be taken to ensure that all interested persons receive timely public notices of projects requiring CWA section 404 permits.

As part of our review of MDEQ's enforcement efforts, citizen complaint files were reviewed in all of the MDEQ district offices. Based on the annual reports prepared by MDEQ, an average of 800 citizen complaints are investigated each year. The program review found that district offices make a concerted effort to address complaints. Generally, the review found complaints were routinely followed with site inspections, which usually were made within two weeks of receipt of the complaint.

An opportunity for public participation in the State's enforcement process is required by federal law, and MDEQ has agreed to implement procedures to comply with the requirements of 40 CFR 233.41(e)(2).

This review concludes that MDEQ has maintained a satisfactory enforcement program. MDEQ has designed the enforcement program to identify un-permitted activities and initiates enforcement responses in a timely manner. Overall, Michigan's enforcement program achieves appropriate injunctive relief through wetlands restoration and wetland mitigation and obtains adequate penalties. The review of MDEQ's use of administrative consent agreements found that the agreements effectively resolved the violations at issue and resulted in additional environmental restoration and conservation of wetland.

Although there is no legal requirement that EPA receive public comment regarding the preliminary determinations of its informal review of Michigan's section 404 program, EPA has decided to accept such public comments for a period of sixty (60) days from the publication date of this notice. EPA seeks public comment on its preliminary determination that formal withdrawal proceedings not be commenced, as well as EPA's detailed findings regarding MDEQ's administration of the permitting and enforcement program and the adequacy of Michigan's legal authorities. If public comments received by EPA indicate significant public interest in the holding of a public hearing, EPA may decide to hold such a hearing.

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–285 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7436–5]

Issuance of a General Permit to the National Science Foundation for the Ocean Disposal of Man-Made Ice Piers From its Base at McMurdo Sound on Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed permit.

SUMMARY: EPA is today proposing to issue a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) to the National Science Foundation (NSF) for the disposal at sea of man-made ice piers from its base at McMurdo Sound on Antarctica. The NSF is the agency of the United States Government responsible for oversight of the United States Antarctic Program. The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations, and serves as the primary logistics base for Antarctica. In order to unload supplies at McMurdo Station, ships dock at an ice pier at McMurdo Station; this man-made pier has a normal life span of three to five years. At the end of its useful life, all transportable equipment, materials, and debris are removed, the pier is cast loose from its moorings at the base and towed out to McMurdo Sound for disposal, where it melts naturally. Issuance of this general permit is necessary because the pier must be towed out to sea for disposal at the end of its useful life. This proposed general permit is intended to protect the marine environment by setting forth specific permit terms and conditions, including operating conditions during use of the pier and clean-up, with which the NSF must comply before the disposal of such ice piers would take place.

DATES: Written comments on this proposed general permit will be accepted until February 6, 2003. All comments must be received or postmarked by midnight of February 6, 2003, or must be delivered by hand by the close of business of that date to the address specified below.

ADDRESSES: This proposed permit is identified as Docket No. OW–2002–0048. Please send an original and three copies of your comments and enclosures (including references) to the ''OW–2002–0048, Comment Clerk'', Water Docket (MC 4101T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA Water Docket, 1301 Constitution Avenue, NW., Room B–135, Washington, DC 20004. Electronic mail comments will be accepted at the e-mail address, *ow-docket@epamail.epa.gov*, and must be received by close of business of the date specified above. Electronic comments must be submitted as an ASCII, WP 5.1, WP 6.1, or WP 8 file, avoiding the use of special characters and any form of encryption. Electronic comments must be identified by Docket Number OW–2002–0048. Comments and data will also be accepted on discs in ASCII, WP 5.1, WP 6.1, or WP 8 file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. To ensure that the Agency can read, understand, and therefore properly respond to comments, commenters should cite the paragraph(s) or sections in the proposed permit to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters should submit any references cited in their comments. Commenters who want the Agency to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No comments submitted by facsimile transmission (fax) will be accepted. The record for this proposed permit has been established, as noted above, as Docket No. OW–2002–0048, and includes printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, 1301 Constitution Avenue, NW., Room B–135, Washington, DC 20004. For access to docket materials, call (202) 566–2426, to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: David Redford, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W.,

Washington, DC, 20460; telephone (202) 566–1288.

SUPPLEMENTARY INFORMATION:

A. Background on McMurdo Station Ice Pier

The NSF was established as an independent agency of the Executive Branch of the government in 1950. Following the International Geophysical Year in 1957–1958, President Eisenhower decided that the NSF should have full responsibility for the formulation, coordination, and management of the United States Antarctic Program (USAP). The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole.

McMurdo Station, which is located on the southern tip of Hut Point Peninsula on Ross Island, is the largest of the three stations. This station is the logistics hub of the USAP, with a harbor, landing strips on both sea ice and shelf ice, and a helicopter pad. The majority of personnel and supplies destined for bases and field camps on Antarctica pass through McMurdo Station.

The approximately 85 buildings at the Station range in size from a small radio shack to large three-story structures. This year-round facility has a peak summer population of approximately 1150 persons, and a winter population of 150 to 200. McMurdo Station is the most southerly port in the world that is accessible by ship.

For most of the year, McMurdo Station is closed in by sea ice. However, in early January, a U.S. Coast Guard icebreaker opens a channel to the harbor at McMurdo Station, allowing a fuel tanker and a supply vessel to replenish the station. The tanker normally arrives in mid-January to unload AN–8 fuel (JP–8 fuel with an icing inhibitor added), and unleaded gasoline. The AN–8 fuel is the primary fuel for power generation, heating sources, and aircraft; the gasoline is used for small portable equipment. In early February, the resupply vessel arrives and off-loads the annual provision of supplies for McMurdo Station and other U.S. Antarctic bases. After unloading its cargo, the supply vessel is backloaded with the previous year's accumulation of wastes, which are returned to the United States for disposal and recycling.

To permit the various vessels to dock and unload at McMurdo Station, construction of an ice pier is necessary. This ice pier, which is approximately 800 feet long, 300 feet wide, and 22 feet thick, is constructed during the winter season in the following manner.

Construction begins when the frozen ice pack in McMurdo Sound reaches approximately 0.6 m (2 ft) in thickness. Snow is bermed to a depth of about 0.6 m (2 ft) on the ice pack, at the perimeter of what will be the ice pier. Heavy-duty pumps are then used to flood the ice pack inside the bermed snow with about 10 cm (4 in) of seawater. This water freezes solid in about 24 hours, when the process is repeated with another 10 cm of seawater. This process is repeated until the ice thickness of the pier reaches approximately 1.5 m (5 ft). When that thickness of the pier is achieved, several holes are drilled in the ice near the periphery of the ice pier, and lengths of 2″ steel pipe are inserted vertically into the holes. The space surrounding the pipe-ice interface is flooded with water and allowed to freeze, fixing the pipes in the ice pier. Approximately 2,100 m (6,900 ft) of 1″ steel cable is then woven around the steel pipes frozen in the ice, providing a horizontal reinforcement mat for the first layer of the ice pier.

The entire process is repeated three more times, until the ice pier is approximately 6.7 m (22 ft) thick. However, the horizontal mat of steel cables is not employed in the last repetition of the process; thus, there are three layers of cable reinforcement in the completed ice pier. When the final layer is created and the pier is approximately 6.7 m (22 ft) thick, three or four wooden utility poles are vertically embedded approximately four feet deep in the ice pier to provide support for electrical cables for lighting, power for equipment, and telephone service to structures on the pier. These poles consist of natural, chemically-untreated wood. In addition, just before the pier is completed, several shorter utility poles are frozen into the proximal edge of the pier, to serve as bollards, to attach the pier to the mainland at McMurdo. When the construction of the ice portion of the pier is completed, a 15–20 cm (6–8 in) thick layer of 2 cm (¾ in) or smaller gravel is applied to cover the surface of the pier, to provide a non-slip working surface.

In summary, the following types and approximate quantities of materials would normally be used in the construction of an ice pier at McMurdo Sound Station:

—1″ steel cable: 6,300 m (21,000 ft).
—2″ steel pipe: 200 m (650 ft).
—Wooden utility poles: 3 or 4, plus several bollards.
—2 cm or smaller gravel: 4,200 m^3 (5,000 yd^3).

At the end of each austral summer season, the pier is inspected, and as much of the gravel non-slip surface as possible is removed and stored for use the following season. If the pier is to be reused the next year, it is flooded with seawater during the winter to create a new surface for the following summer season. The pier has a normal viable life of three to five years; after that period, factors such as stress cracking and erosion no longer allow the pier to be used. The erosion of the seaward face of the ice pier is caused by such factors as wave action, contact of vessels with the pier face, and the discharge of coolant water from ships docked at the pier.

When the pier has deteriorated to the point that it is not capable of being used the following season, the wooden poles are cut off just above the surface of the ice, the gravel is scraped off for use in the following season, all transportable equipment, materials, and debris are removed, and the pier is physically separated from its attachment to McMurdo Base at the end of the austral summer. It is then towed by a U.S. Coast Guard cutter into McMurdo Sound past the distal end of the open channel in the ice, as near to the Ross Sea currents as possible. The pier is set free in a direction that will allow it to flow with the Ross Sea currents, away from the open channel in the ice. The pier then floats free amidst the ice pack, where it mixes with the annual sea ice, and eventually disintegrates.

Complete information is not available on the time required for melting and disintegration of an ice pier, or on the path an ice pier takes after its release. NSF scientists have estimated, however, that melting and disintegration will take place over several years, and that ice piers will drift from their release point in McMurdo Sound, into the Antarctic Sea, and eventually into the Southern Ocean, where they will presumably float with the currents of the Southern Ocean. These estimates are supported by tracking data collected on an ice pier disposed by NSF in February 1999 under an emergency permit. One condition of that permit was that the pier be tracked by the use of emplaced pingers for a period of one year. Tracking records indicated that the pier traveled approximately 600 miles in a generally northerly direction into the Southern Ocean during the first six months, when it then became locked in ice. No further movement of the ice pier was detected in the second six months of the year-long tracking period. These tracking results confirm what NSF staff believed would happen to any released ice piers.

B. Statutory and Regulatory Background

1. Marine Protection, Research, and Sanctuaries Act (MPRSA)

Section 102(a) of the MPRSA, 33 U.S.C. 1412(a), requires that agencies or instrumentalities of the United States obtain a permit to transport any material from any location for the purpose of dumping into ocean waters. Section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of a general permit under the MPRSA for the dumping of materials which have a minimal adverse environmental impact, and are generally disposed of in small quantities. General permits currently exist for burial at sea for both cremated and non-cremated human remains, for vessels used by the United States Navy for the purposes of target practice and testing ordnance, and for vessels transported for the purpose of disposal.

The proposed towing of ice piers by the NSF from McMurdo Station for disposal at sea constitutes transportation of material for the purpose of dumping in ocean waters, so it is subject to the MPRSA. The NSF has requested the issuance of a general ocean dumping permit for its ice piers.

2. Obligations Under International Law

On October 2, 1996, President Clinton signed into law the Antarctic Science, Tourism, and Conservation Act of 1996, amending the Antarctic Conservation Act of 1978. This law is designed to implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol''). The Protocol was signed by the U.S. on October 4, 1991, ratified on April 17, 1997, and entered into force on January 18, 1998. The Protocol builds on the Antarctic Treaty to extend its effectiveness as a mechanism for ensuring protection of the Antarctic environment. It designates Antarctica as a natural reserve, devoted to peace and science, and sets forth basic principles and detailed, mandatory rules applicable to human activities in Antarctica. It prohibits all activities relating to mineral resources in Antarctica, except for scientific research. It commits signatories to the Protocol (known as Parties) to environmental impact assessment procedures for proposed activities, both governmental and private. Among other things, it also requires Parties to protect Antarctic flora and fauna, and imposes strict limitations on disposal of wastes in Antarctica, and discharges of pollutants into Antarctic waters.

Several sets of regulations exist that will assist in implementation of the Protocol. These include NSF regulations regarding environmental impact assessment of proposed Foundation actions in Antarctica (45 CFR part 641), NSF waste regulations for Antarctica (45 CFR part 671), and EPA regulations regarding environmental impact assessment of non-governmental activities in Antarctica (40 CFR part 8).

EPA wishes to clarify that its proposal to issue a general permit under the MPRSA does not indicate whether the proposed activity is in compliance with other relevant obligations under the Protocol and implementing legislation. Accordingly, the responsible United States authority must make separate determinations with respect to other relevant obligations, and the Agency will coordinate with the responsible authority, as appropriate, in the Agency's consideration of the issuance of a general permit under the MPRSA.

In this regard, the Agency notes that the NSF has completed a USAP Final Environmental Impact Statement (June 1980), a USAP Final Supplemental Environmental Impact Statement (October 1991), and an Initial Environmental Evaluation (May 1992), all of which address in some aspects the construction, operation, and disposal of ice piers at McMurdo Station in Antarctica. All of these documents are available for review at the Office of Polar Programs of the NSF, 4201 Wilson Boulevard, Arlington, VA 22230 (Contact: Joyce Jatko, telephone: (703) 292–8030). The documents did not identify any potential environmental impacts from the disposal of ice piers, other than the minor navigational hazard that would be equivalent to that posed by an ice floe or a small iceberg. The Agency considered the analyses contained in the three documents cited above in developing this proposed general permit.

C. Potential Effects of Ice Pier Disposal

Because the natural creation and disintegration of icebergs occurs constantly in the Antarctic environment, the primary ice component of the NSF piers is not of environmental concern. However, the ice piers also contain approximately 21,000 feet of 1″ steel cable and 650 feet of 2″ steel pipe between the ice layers, that eventually will fall, as the pier disintegrates, to the bottom of McMurdo Sound, the Antarctic Sea, or the Southern Ocean. The steel cable and pipe will sink permanently to the bottom, and over considerable time, will dissolve through oxidative processes, unless they fall into very deep anaerobic waters, where they would not dissolve.

Because there are approximately 2,100 m (6,900 ft) of cable frozen in each of the three layers of the ice pier, it is possible that during the melting process there may be loops of cable suspended from the bottom of the ice pier. These loops will remain for brief periods of time before the cable in each layer is released from the bottom of the pier due to melting. The entire length of 2,100 m (6,900 ft) of cable would then descend rapidly to the ocean floor.

The Agency has considered the possibility of these loops of cable entangling organisms in the marine environment. The only animals that could potentially become entangled in the suspended loops of cable are large whales of the Antarctic Sea or the Southern Ocean. However, these animals are known to have sophisticated natural sonar (sound navigation and ranging) systems, are able to detect and precisely identify objects at considerable distances with those systems, and normally will avoid large objects such as icebergs. In addition, because in excess of 80 percent of icebergs (and the ice pier) is submerged beneath the surface, there is no reason to believe any cetaceans will approach an ice pier, by either coming near it on the surface to breathe, or by swimming beneath it. Thus, the possibility of entanglement of large animals by suspended loops of cable from the ice pier is regarded as very minimal.

Additionally, the Agency and the NSF have discussed the possibility of seals becoming ensnared in any loops of cable hanging from the ice pier. Although seals are known to routinely haul out on ice floes to rest and to breed, EPA does not believe there is any danger from any cables embedded in the edges of the ice pier to Antarctic seal populations in their passage from the ocean to the ice surface, because any loops of cable will be visible and easily avoided.

There is no danger to any marine avian species from the release of the ice piers. Penguins, if they are in the area, can easily hop onto, and off, the edge of the ice pier, if necessary. Further, there is no permanent penguin population in the area of McMurdo Station on a year-round basis. Any penguins in the area arrive at their usual breeding rookeries in late October of each year. Their eggs are hatched in November, the chicks are fledged no later than late December of each year, and all penguins, except for a very few stragglers, are gone from the McMurdo Station area by late January every year. On those years when the ice pier must be cut loose, the detachment

from McMurdo Station occurs in late February. Thus, there are no penguins in the area at that time, since the birds will have already gone out to sea again.

Further, both the National Marine Fisheries Service and the Fish and Wildlife Service have agreed that the disposal of ice piers from McMurdo Station will not have any effect on endangered or threatened species, nor is the action likely to adversely affect any critical habitats.

In addition, the time that the loops of cable are suspended from the bottom of the ice pier would be expected to be relatively brief. Once a substantial portion of the cable in each layer is released from the ice by melting processes, the weight of the suspended cable will act to detach the remainder of the layer of cable from the pier. As discussed above, the entire length of cable would then fall rapidly to the ocean bottom.

Although the wooden utility poles and the bollards are cut off at the level of the ice surface before the pier is towed for dumping, the six or seven stump ends of the poles, approximately four feet long, remain frozen in the pier. (The NSF requires that the longer, exposed lengths of the utility poles be returned for recycling back to the United States; they are never disposed of in the ocean). When eventually released from the pier during the disintegration process, the stump ends of the poles could float for several years, providing substrate for attachment of sessile organisms. Eventually, however, the poles will be destroyed by biological processes. Navigational hazards from the poles are unlikely, because of their small size and limited number.

Of potentially greater environmental concern are any operational discharges, leaks, or spills that may have contaminated the surface of the pier over the period of its existence. Examples of such possible releases include AN–8 (jet fuel formulated for cold environment use by heavy diesel engines and aircraft) or gasoline during the annual unloading process from the resupply oil tanker; spills of material due to leaks or cracks in containers or drums during the annual offloading from the supply vessel; leaks of AN–8, gasoline, engine lubricating oil, hydraulic fluid, or ethylene glycol (antifreeze) from equipment working on the pier; or spills of liquids or chemicals being stored on, or moved across, the pier. These discharges, leaks, and spills could result in contamination of parts of the pier with chemical compounds of concern to the marine environment.

To assess this potential further, in February 1993 the NSF analyzed eleven ice samples taken from the ice pier at McMurdo Station. The samples were collected in the following manner. The central portion of the pier was first divided into 21 equal area quadrats, each approximately 100′ × 100′. The center of each plot was then identified, and four additional sample locations were identified in an equidistant ''X'' pattern from the center sample point. One sample was collected from each of the five points in each plot, and the five sub-samples were then composited into a single sample for each plot. Composited samples were analyzed for alternating plots throughout the grid pattern, *i.e.*, the composited sample for every other plot was analyzed, for a total of eleven analyses. The samples were analyzed for two compounds: ethylene glycol (antifreeze) and total extractable hydrocarbons (TEH). Ethylene glycol was selected because of the possibility of leaks from engine blocks; TEH was selected because of the need for a broad spectrum analytical procedure, and because the presence of TEH would represent any possible extractable petroleum discharges onto the surface of the ice pier. Ethylene glycol was not detected in any of the eleven samples, at a detection limit of 16 mg/kg; TEH was not detected in ten of the eleven samples, at a detection limit of 3 mg/kg. Only one sample, collected beneath two 55-gallon fuel drums used to provide heat for a warming hut on the ice pier, showed a concentration of 70 mg/kg. This sample was collected directly underneath fuel drums where dripping had occurred during drum exchange operations.

Subsequently, the NSF issued a directive that at all locations where fuel drums for building heating systems, or fuel transfer stations are found, such locations shall be underlain with secondary containment methods, to facilitate capture of leaks or spills. Secondary containment methods include large metal pans or impermeable liners placed beneath the potential contaminant source. Drip pans were installed under the fuel drums at the warming hut on the ice pier.

In February 1994, the approximately 800′ by 300′ surface of the ice pier was again divided into 21 quadrats for further examination of locations of contamination. NSF personnel examined the entire surface of the pier, after the non-slip gravel surface had been removed, and any points on the pier showing signs of contamination from leaks or spills were marked and noted. Five samples were taken from each of the 21 quadrats; the samples were composited and analyzed for total petroleum hydrocarbons (TPH). TPH analysis, which identifies a narrower range of analytes than the broader TEH analytical procedure, was used because previous analyses demonstrated that only analytes from the narrower range are present. TPH has a detection limit of 10 mg/kg; for all samples except one, TPH was undetected. That single sample had a TPH concentration of 50 mg/kg. Analysis of that single sample was unable to specifically determine the chemical composition of the contaminants; vehicle engine fuel or hydraulic fluids were identified as the most likely possibilities.

The NSF has a spill prevention, control, and countermeasures (SPCC) plan for all of the stations and bases under NSF jurisdiction in Antarctica. The plan, revised in September 1994, and currently being updated, includes a section addressing fuel storage and transfer systems for the ice pier at McMurdo Station. The SPCC plan identifies the annual unloading of petroleum products from the supply tanker as having the greatest potential for accidental discharge of contaminants. Previously, four-inch diameter hoses made up in 50-foot lengths were used to unload fuel from the tanker to the tank farms on the mainland at McMurdo Station. However, to reduce the risk of a potential fuel spill during the tanker unloading operation, new six-inch diameter hoses made up in 660-foot lengths replaced the older hoses in 1993. The new hoses significantly reduced the number of hose connections (and potential leaks) on the ice pier. For further protection, the connecting point from the tanker to the transfer hose was underlain by large drip pans.

In addition, the SPCC plan identifies the annual unloading of drummed lubricants, solvents, and hazardous materials from the cargo freighter, and the subsequent loading of the freighter with materials destined to be returned to New Zealand or the United States, as potential sources of accidental discharge or spills. As a result, to reduce the potential for discharges, the plan requires all materials received from, or loaded onto, the cargo vessel to be containerized in double-walled military vans.

D. Discussion

Today EPA is proposing to issue a new general permit to NSF and its agents for the ocean dumping of man-made ice piers from the NSF research station at McMurdo Sound, Antarctica, subject to specific conditions. Agents of the NSF are included in the permit because transportation for the purpose of dumping the pier may be by vessels

which are not under the direct ownership or operational control of the NSF, *e.g.*, the U.S. Military Sealift Command, the U.S. Navy, or U.S. Coast Guard vessels. Further, the proposed general permit applies only to the ocean dumping of man-made ice piers from the NSF station at McMurdo Sound, Antarctica. The 1992 amendments to the MPRSA (Pub. L. 102–580) provide that permits under the MPRSA shall be issued for a period not to exceed seven years (section 104(a), 33 U.S.C. 1414(a)); consequently, the term of this proposed permit is limited to a maximum of seven years.

The proposed general permit establishes several specific conditions that must be met during the life of, and prior to the ocean dumping of, the ice pier. In addition, it requires the NSF to report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on any spills, discharges, or clean-up procedures on the ice pier, and on any ocean dumping of ice piers from McMurdo Station conducted under this general permit.

With the institution of new protective measures, such as longer length hoses for unloading petroleum products from the annual supply tanker, and new precautions taken in the handling and return to bases outside Antarctica of used or contaminated chemicals, solvents, and hazardous materials, the chance of a spill or a discharge of these materials is low. There is considerable vehicular traffic on the ice pier during the austral summer season, and the possibility of engine block leaks or discharges from these vehicles cannot be totally avoided. However, the NSF has informed the Agency that vehicles are parked on the pier for only brief periods of time, ranging from minutes to less than an hour, and that no vehicles are ever parked on the pier overnight.

The proposed general permit requires that the NSF have an SPCC plan in place, consistent with the requirements of 40 CFR 112.3, for the ice pier that addresses:

(1) The unloading of petroleum products from supply tankers to the storage tanks at McMurdo Station;

(2) The unloading of drummed chemicals, petroleum products, and material (cargo) from cargo freighters to supply depots at McMurdo Station; and

(3) The loading of materials to freighters destined to be returned to bases outside Antarctica.

The proposed permit requires that the SPCC plan include methods to minimize the accidental release or discharge of any products to the ice pier. In addition, the proposed general permit requires that the following clean-up and reporting procedures must be followed by NSF in the event of a spill or discharge on the pier:

(1) All spills or discharges must be cleaned up within two hours of the spill or discharge, or as soon as possible thereafter.

(2) If a spill or discharge occurs, clean-up procedures must be completed to a level below any visible evidence of the spill or discharge.

(3) As part of normal permit monitoring requirements, an official record of the following information shall be kept by NSF:

(a) The date and time of all spills or discharges, the location of the spill or discharge, the approximate volume of the spill or discharge, clean-up procedures employed, and the results;

(b) The number of wooden poles remaining in the pier at the time of release from McMurdo Station, and their approximate length;

(c) The approximate length of the steel cables remaining in the pier at the time of its release;

(d) Any other substances remaining on the pier at the time of its release; and

(e) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound.

(4) A copy of this record shall be submitted to the Director of the Oceans and Coastal Protection Division, in the EPA's Office of Water, by June 30 of every year as part of the annual reporting requirements.

The conditions specified in the proposed permit are intended to protect the Antarctic environment against release of contaminants from the McMurdo Station ice pier following its ocean dumping and subsequent melting. As noted above, section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of general permits for the dumping of materials which have minimal adverse environmental impacts.

In light of the testing and analyses described above, and the conditions which are stipulated in the proposed permit for the disposal of ice piers, it is the determination of the Agency that only minimal adverse environmental impacts would result from the dumping of ice piers from the NSF base at McMurdo Station in Antarctica.

Furthermore, the NSF is directed, as a condition of this permit, to utilize a methodology to track any ice piers released from McMurdo Station for a period of one year from the date of release of the pier. Such methodologies may include the use of satellite-tracked pingers placed on the ice pier, or any other methodology that will allow data to be collected on the course, speed, and location of the ice pier. The results of these tracking efforts are to be included in the reports that the NSF is required to submit to the Agency. The period of one year was chosen by the Agency for several reasons: first, batteries for pinger tracking operations beyond a period of one year become considerably heavier and bulkier (and a greater source of pollution to the marine environment when the ice piers eventually melt); and further, one year's measurements should provide substantial evidence concerning the track of ice piers in the dissolution process.

The NSF shall submit tracking reports to the Agency for all releases of ice piers from McMurdo Station under this permit. If tracking results demonstrate that all such ice piers released have generally followed the same path and time duration for the one year following release, the Agency will consider whether further tracking efforts and tracking reports shall be required from the NSF under any future versions of this permit.

Considering that any contaminants remaining on the surface of the piers are expected to be extremely minimal, and further, that the area over which the melting and disintegration of the piers occurs is immense, the potential for damage to the environment from ocean dumping of any McMurdo Station ice piers is minimal. In addition, the possibility of entanglement of large organisms in suspended loops of cable from the melting ice piers has been determined by the Agency to be very minimal; further discussion of this issue can be found in ''C. Potential Effects of Ice Pier Disposal,'' above.

Further, it should be noted that the issuance of an ocean dumping permit to the NSF does not in any way relieve the NSF of meeting any of its obligations under the Antarctic Protocol, the Antarctic Conservation Act, or the implementing regulations.

Statutory and Executive Order Reviews

A. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management

and Budget. Since this proposed general permit affects only a single Federal agency's record-keeping and reporting requirements, it is not subject to the requirements of the Paperwork Reduction Act.

B. Endangered Species Act

The Endangered Species Act (ESA) imposes duties on Federal agencies regarding endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Section 7(a)(2) of the ESA and its implementing regulations (50 CFR part 402) require EPA to ensure, in consultation with the Secretary of Interior or Commerce, that any action authorized, funded, or carried out by EPA in the United States or upon the high seas, is not likely to jeopardize the continued existence of any endangered or threatened species, or adversely affect their critical habitat.

In compliance with section 7 of the ESA, an endangered species list for the affected area of ocean dumping of ice piers from the NSF facility at McMurdo Station was requested by EPA and received from both the Fish and Wildlife Service (F&WS) of the Department of the Interior and the National Marine Fisheries Service (NMFS) of the Department of Commerce. No endangered, threatened, or candidate species are reported to potentially occur in the affected area.

EPA has discussed this matter with both the F&WS and the NMFS pursuant to section 7 of the ESA, and the agencies have agreed that the ocean dumping of ice piers by the NSF or its agents from McMurdo Station in Antarctica will have no effect on endangered or threatened species. EPA will consider any comments offered by either the F&WS or the NMFS on this issue before promulgating a final general permit on the ocean dumping of ice piers.

Dated: January 2, 2003.

Suzanne E. Schwartz,

Director, Oceans and Coastal Protection Division.

The proposed permit is as follows:

Disposal of Ice Piers From McMurdo Station, Antarctica

The United States National Science Foundation and its agents are hereby granted a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1412(a) and 1414(c), to transport ice piers from the McMurdo Sound, Antarctica, research station for the purpose of ocean dumping, subject to the following conditions:

(a) The NSF shall have a spill prevention, control, and countermeasures (SPCC) plan in place, consistent with the requirements of 40 CFR 112.3, for the McMurdo Station ice pier. The SPCC plan shall address procedures for loading and unloading the following materials, and shall include methods to minimize the accidental release or discharge of any of the following materials to the ice pier:

(1) Petroleum products unloaded from supply tankers to the storage tanks at McMurdo Station;

(2) Drummed chemicals, petroleum products, and materiel unloaded from cargo freighters to supply depots at McMurdo Station; and

(3) Materials loaded to freighters destined to be returned to bases outside Antarctica.

(b) If a spill or discharge occurs on an ice pier, clean-up procedures must be completed by NSF or its contractors to a level below any visible evidence of the spill or discharge. All spills or discharges on an ice pier must be cleaned up within two hours of the spill or discharge, or as soon as possible thereafter.

(c) As part of normal monitoring requirements, a record of the following information shall be kept by NSF:

(1) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, and the results;

(2) The number of wooden poles remaining in the pier at the time of its release from McMurdo Station, and their approximate length;

(3) The approximate length of the steel cables remaining in the pier at the time of its release from McMurdo Station;

(4) Any other substances remaining on the pier at the time of its release from McMurdo Station; and

(5) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound or the Antarctic Sea.

(d) The non-embedded ends of all wooden utility poles and bollards will be cut off from the ice pier prior to disposal, and shall not be disposed of in the ocean.

(e) Prior to the ocean dumping of any ice piers, the following actions shall be taken by NSF:

(1) Other than the matter physically embedded in the ice pier (*i.e.*, the ends of light poles or bollards frozen in the pier, and the strengthening cables), all other objects (including the non-embedded portions of bollards used for maintaining a connection between the pier and the mainland, the non-embedded portions of poles used for lighting, power, or telephone connections, and any removable equipment, debris, or objects of anthropogenic origin), shall be removed from the pier prior to dumping.

(2) The gravel non-slip surface of the pier shall be removed to the maximum extent possible, and stored on the mainland for subsequent use.

(3) A methodology to track any ice piers released from McMurdo Station shall be established and utilized for a period of one year from the date of release of the ice pier. The results of these tracking efforts are to be included in the annual reports that the NSF is required to submit to EPA.

(f) The NSF shall submit a report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on (1) Any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station, (2) any ocean dumping of ice piers from McMurdo Station, and (3) any tracking efforts of ice piers released from McMurdo Station under this general permit for the year preceding the date of the annual report.

(g) For the purpose of this permit, the term ''ice pier(s)'' means those man-made ice structures containing embedded steel cable, and any remaining gravel frozen into the surface of the pier, that are constructed at McMurdo Station, Antarctica, for the purpose of off-loading the annual provision of materiel and supplies for the base at McMurdo Station and other U.S. Antarctic bases, and for loading the previous year's accumulation of wastes, which are returned to the United States.

(h) This permit shall be valid until [add date—seven years from the date of issuance].

[FR Doc. 03–335 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–15]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions, and Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors, and Notice of Annual Adjustment of the Maximum Dollar Limits on Certain Allocations by a Bank of its Annual Required Affordable Housing Program Contributions

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a ''Community Financial Institution'' (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), pursuant to the requirements of section 2(13)(B) of the Federal Home Loan Bank Act (Bank Act) requirements of the Finance Board's regulations. Notice is hereby given that the Finance Board has made similar adjustments to the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI–U, as published by the DOL, pursuant to the requirements of section 7(i)(2)(B) of the Bank Act and requirements of the Finance Board's regulations. In addition, notice is hereby given that the Finance Board has made similar adjustments to the maximum dollar limits on certain allocations by a Bank of its annual required Affordable Housing Program (AHP) contributions, pursuant to the requirements of the Finance Board's regulations.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Economic and Financial Analysis, Office of Supervision, (202) 408–2991, or Kirsten L. Landeryou, Economic and Financial Analysis, Office of Supervision, (202) 408–2552. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 2(13)(B) of the Bank Act (12 U.S.C. 1422(13)(B)), and § 900.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board, beginning in 2001, to adjust annually the cap on average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 900.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CP–U, as published by the DOL.

Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)) and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 918.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make similar annual adjustments to the annual compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1), for members of the boards of directors of the Banks. Section 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(i), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards homeownership set-aside programs. In addition, § 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(ii), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program. Section 951.3(a)(2) of the Finance Board's regulations (12 CFR 951.3(a)(2)), requires the Finance Board, beginning in 2002, to make a similar annual adjustment to the maximum dollar limit set forth in § 951.3(a)(2), on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program.

For purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CP–U-adjusted Cap. *See* 12 CFR 900.1. For purposes of the Banks' board of directors annual compensation limits, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CP–U-adjusted limits on such compensation. *See* 12 CFR 918.3(a)(1). For purposes of the maximum dollar limits on Banks' allocations from annual required AHP contributions, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CP–U-adjusted maximum dollar limits.

The annual adjustments of the existing CFI Asset Cap, annual Bank director compensation limits and maximum dollar limits on Bank allocations from annual required AHP contributions, effective January 1 of a particular calendar year, reflect the percentage by which the CP–U published for November of the preceding calendar year exceeds the CP–U published for November of the year before the preceding calendar year (if at all). For example, the adjustments of the limits effective January 1, 2003 are based on the percentage increase in the CP–U from November 2001 to November 2002. The CFI Asset Cap is rounded to the nearest million dollars, the annual compensation limits are rounded to the nearest dollar and the limits on allocations from AHP contributions are rounded to the nearest $100,000.[1]

The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the adjusted CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits as close to the January 1 effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce their adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in ''escalation agreements'' because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that has not been seasonally adjusted to calculate the new CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits.

The unadjusted CPI–U increased 2.2 percent between November of 2001 and November of 2002. Based on this data, pursuant to the requirements of § 900.1, the Finance Board has adjusted the CFI Asset Cap from the 2002 limit of $527 million to $538 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $538 million by rounding to the nearest million.

Pursuant to § 918.3(a)(1), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the annual compensation limits for the members of the boards of directors of the Banks as follows, effective January 1, 2003: for a Chairperson—$26,921; for a Vice-Chairperson—$21,537; for any other member of a Bank's board of directors—$16,152. The Finance Board arrived at the adjusted annual compensation limits by rounding to the nearest dollar.

Pursuant to § 951.3(a)(1)(iii), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the maximum dollar limits

[1] All adjusted limits referred to in this notice have been rounded to some dollar level. However, the calculations of new limits are based on cumulative CP–U changes applied to the limits as they first appeared in Finance Board regulations, and hence are not distorted over time by rounding.

on the amounts that a Bank may set aside from its annual required AHP contributions for the current year and the subsequent year, toward homeownership set-aside programs, from the 2002 limit of $3.0 million to $3.1 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $3.1 million by rounding to the nearest $100,000.

Pursuant to § 951.3(a)(1)(iii), the Finance Board also applied the 2.2 percent increase in the unadjusted CPI–U to the 2002 maximum dollar limit on the amount that a Bank may set aside from its annual required AHP contributions, for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program. Rounding the resulting number to the nearest $100,000, the maximum dollar limit remains at the 2002 level of $1.5 million, effective January 1, 2003. In addition, pursuant to § 951.3(a)(2), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the maximum dollar limit on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program, from the 2002 limit of $3.0 million to $3.1 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $3.1 million by rounding to the nearest $100,000.

Dated: December 31, 2002.

Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–196 Filed 1–6–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 13, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–354 Filed 1–3–03; 2:17pm]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Unmodified SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit the Standard Form (SF) 278 for extension of approval (up to three years) by Office of Management and Budget

(OMB) under the Paperwork Reduction Act. The SF 278 is henceforth to be accompanied by agency notification to filers of the adjustment of the gifts/travel reimbursements reporting thresholds and, when final, the revisions to the Privacy Act Statement. Both revisions will not be incorporated into the form itself at this time, since OGE plans a more thorough revision of the form in the next year or two.

DATES: Comments on this proposed extension should be received by March 24, 2003.

ADDRESSES: Comments should be sent to Mary T. Donovan, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at *usoge@oge.gov*. For E-mail messages, the subject line should include the following reference—''Paperwork comment on the SF 278.''

FOR FURTHER INFORMATION CONTACT: Ms. Donovan at the Office of Government Ethics; telephone: 202–208–8000, ext. 1185; FAX: 202–208–8038. A copy of a blank SF 278 may be obtained, without charge, by contacting Ms. Donovan. Also, a copy of a blank SF 278 is available through the Forms, Publications & Other Ethics Documents section of OGE's Web site at *http://www.usoge.gov*.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the unmodified Standard Form 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for extension of approval for (up to) three years by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 is scheduled to expire at the end of March 2003. Since, for now, no modification to this standard form is being proposed, OGE will not seek any General Services Administration (GSA) standard forms clearance for this extension.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), is the sponsoring agency for the Standard Form 278. In accordance with section 102 of the Ethics Act, 5 U.S.C. app. section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relate to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The Office of Government Ethics notes two changes (discussed below) affecting the content of SF 278s. The first change concerns the recent adjustments in the gifts/reimbursements reporting thresholds. The second change involves the routine use language contained in the Privacy Act Statement of the form that will be revised in 2003. For now, OGE is proposing no revisions to the SF 278, but rather asks that executive branch departments and agencies inform SF 278 filers, through cover memorandum or otherwise, of these two changes when the existing

March 2000 edition of SF 278 report forms are provided for completion. In addition, information regarding these changes is being posted on OGE's Web site.

Effective January 1, 2002, GSA raised ''minimal value'' under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to $285 or less for the three-year period 2002–2004. See 67 FR 56495–56496 (September 4, 2002). As a result, OGE has advised agencies and revised its financial disclosure regulations to reflect the increase in the thresholds for SF 278 reporting of gifts and travel reimbursements received from any one source to ''more than $285'' for the aggregation level for reporting and to ''$114 or less'' for the de minimis aggregation exception threshold. These Ethics Act reporting thresholds are tied to any adjustment in foreign gifts minimal value over $250 (see 5 U.S.C. app. section 102(a)(2)(A) & (B)). See OGE's September 27, 2002 memorandum to designated agency ethics officials (DO–02–021) and 67 FR 61761–61762 (October 2, 2002). Both the GSA and OGE rulemakings and OGE's memorandum are posted on the OGE Web site.

In addition, OGE is in the process of updating the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses on page 11 of the instructions on the SF 278, will be affected. A summary of the anticipated changes relevant to that SF 278 statement has been prepared for inclusion with the paperwork clearance submission to OMB. Once the new language in OGE's forthcoming Privacy Act notice is finalized (anticipated completion date is spring 2003), OGE will advise departments and agencies of the Privacy Act Statement changes (with notice to OMB at that time) without further paperwork clearance.

During the last session of Congress, a bill (S. 1811) was introduced to amend the Ethics in Government Act of 1978 (5 U.S.C. app.) to streamline the financial disclosure process for executive branch employees. The bill was not enacted, but may be introduced again in the current session of Congress. If the bill is enacted, the public financial disclosure requirements will change, and the SF 278 will have to be revised accordingly. At that time, OGE would seek paperwork renewal from OMB and standard form clearance from GSA for the revised SF 278.

For now, OGE will continue to make the unmodified SF 278 available to departments and agencies and their reporting employees through the Forms, Publications & Other Ethics Documents section of OGE's Web site. This allows employees two different fillable options for preparing their report on a computer (in addition to a downloadable blank form), although a printout and manual signature of the form are still required unless specifically approved otherwise by OGE.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms, together with those of terminees from such positions who may file after leaving the Government, forms the basis for OGE's paperwork estimates in this notice.

In light of OGE's experience over the past three years (1999–2001), the estimate of the total number, on average, of such nominees' SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees) is 449. (The 2002 figures are not yet available.) This estimated number is based primarily on the forms processed at OGE by private citizen Presidential nominees to positions subject to Senate confirmation (and their private representatives—lawyers, accountants, brokers and bankers) and those who file termination reports from such positions after their Government service ends, as well as Presidential and Vice Presidential candidates who are private citizens. The OGE estimate covers the next three years, 2003–2005 including a significant increase in reports anticipated with the fall 2004 Presidential election and following transition. The prior paperwork burden estimate was 260 forms per year. The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee and terminee report forms processed at the Office of Government Ethics is being adjusted to 1,347 (from 780) hours.

Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1999–2001 (the 2002 figures are not available), that some 21,200 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,060 to 2,120 per year at most.

Public comment is invited on each aspect of the SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Any comments received in response to this notice will be summarized for, and may be included with, OGE's request for extension of OMB paperwork approval for this information collection. Comments will also become a matter of public record.

Approved: December 30, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 03–287 Filed 1–6–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs)''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 10, 2003.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 2101

East Jefferson Street, Suite 500, Rockville, MD 20852–4908. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs)''

The project is being conducted in response to an AHRQ RFP entitled ''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–02–0008). The Healthcare Research and Quality Act of 1999, amending section 911(b) of Title IX of the Public Health Service Act (42 U.S.C. 299 *et seq.*), states that AHRQ will ''employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations * * * including provider-based research network''.

In order to assist AHRQ in meeting this goal, AHRQ created an RFP that specifically requires a resource center to ''access the specific needs, if any, of each PBRN awarded (by AHRQ)'' by determining ''the stage of development of networks funded under the PBRN initiatives [AHRQ RFA–HS–02–003] and the specific resource needs of each network.''

The PBRNs are groups of primary care practices working together with academic researchers to address community-based health care research questions and to translate research findings into practice to improve health care. AHRQ funded 36 PBRNs in September, 2002, as well as a Resource Center intended to provide technical assistance and support to the PMRNs in their efforts to design and implement research projects. It is expected that an additional 24 PBRNs will be funded in 2003. In the proposed activities, the PBRN Resource Center will collect data directly from each PBRN and their affiliated practices. The collection is a needs assessment of each of the AHRQ funded PBRNs. The collection will identify how the Resource Center can best support these networks through the development and use of information technology, and by linking the PBRNs with appropriate technical experts.

The in-depth needs assessment of each PBRN will use written and web surveys and telephone interviews. Each needs assessment will ascertain the current capabilities of an individual PBRN in several respects, including:

• The ability to design and implement appropriately rigorous and complex research plans, including their access to key resources such as validated instruments and competence conducting advanced data analysis;

• The technical capacity for conducting data management tasks such as aggregating research data across networks, developing data files, and warehousing data;

• The ability to use information technology to foster effective communication with affiliated practices and with other research networks;

• The ability to address HHS priorities such as research involving populations of diverse race or ethnicity, socioeconomic status, age, gender and geography as well as preparedness for bioterrorism and other emerging public health threats;

• The ability to engage the network's practicing clinicians and community represenatives in the design, conduct and dissemination of research studies;

• The ability to design and implement data collection instruments in clinical settings;

• The mechanisms for supporting AHRQ's central goal of assuring new research findings are translated into everyday practice; and

• Their capacity for long-term sustainability.

To obtain the necessary information, surveys and interviews will be conducted with PBRN staff and staff members in each network's participating practices.

Method of Collection

Due to the relatively small number of organizations in the respondent universe of AHRQ funded PBRNs, and the expected diversity of needs, we will survey all of the AHRQ funded PBRNs (including those to be funded in 2003).

The method of data collection for the needs assessments consists of web-based and paper-based surveys and telephone interviews. We expect to involve multiple individuals from each PBRN in the data collection, including the PBRN administrator, information technology personnel, and the PBRN's lead clinician as well as individuals with similar roles at the affiliated practice level.

All individuals or networks unable to complete the survey via the Web will be sent a paper-based survey to complete and return by mail. The Resource Center will data enter any surveys completed by hand so that these responses can be included in the analyses. Non-respondents will receive a telephone reminder and, if necessary, will be sent an additional survey.

ESTIMATED ANNUAL RESPONDENT BURDEN

Data collection effort	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Estimated annual cost to the Government
Needs assessment	180 (maximum of three individuals from each of 60 PBRNs).	1	180	*40.26	$7,246.80
Needs assessment	720 (maximum of two individuals at member practices PBRNs)***.	0.5	360	**45.77	16,477.20
Total	900	0.6	540		

Footnotes:

* Based on the mean of the average wages for manager in medicine and health, physicians, and computer systems analyst/scientist, National Compensation Survey: Occupational Wages in the United States, 2000, ''U.S. Department of Labor, Bureau of Labor Statistics, September 2001''.

** Based on the mean of the average wages for manager in medicine and health and physicians, ''National Compensation Survey: Occupational Wages in the United States, 2000'', ''U.S. Department of Labor, Bureau of Labor Statistics, September 2001''.

*** This estimate assumes that variation exists in the number of member practices that comprise each PBRN. Consequently, we will survey two individuals (the lead clinician and the administrator) at each of three member practices in 20 PBRNs; in 20 PBRNs we will survey two individuals at each of six member practices; and in 20 PBRNs we will survey two individuals at each of nine member practices.

Estimated Annual Costs to the Federal Government

The total cost to the government for activities directly related to this data collection is $432,451.00.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 30, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 03–289 Filed 1–6–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: January 23–24, 2003 (Open from 8 a.m. to 8:15 a.m. on January 23 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 6–7, 2003 (Open from 8 a.m. to 8:15 a.m. on February 6 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: February 10–11, 2003 (Open from 8 a.m. to 8:15 a.m. on February 10 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Systems Research.

Date: February 24–25, 2003 (Open for 6 p.m. to 6:15 p.m. on February 24 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852 (For February 24 Meeting). AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852 (For February 25 Meeting).

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Place: February 26–27, 2003 (Open from 7 p.m. to 7:15 p.m. on February 26 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852 (For February 26 Meeting). AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852 (For February 27 Meeting).

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 27, 2002.

Carolyn M. Clancey,

Acting Director.

[FR Doc. 03–288 Filed 1–6–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–17–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: The National Birth Defects Prevention Study (OMB 0920–0010)—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC) has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the five counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. From 1993 to 1996, NCBDDD conducted the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects. Infants with birth defects were identified through MACDP and maternal interviews, and clinical/laboratory tests were conducted on approximately 300 cases and 100 controls per year. Controls were selected from among normal births in the same population. In 1997 the BDRFS became the National Birth Defects Prevention Study (NBDPS). The major components of the study did not change.

The NBDPS is a case-control study of major birth defects that includes cases identified from existing birth defect surveillance registries in ten states (including metropolitan Atlanta). Control infants are randomly selected from birth certificates or birth hospital records. Mothers of case and control infants are interviewed using a computer-assisted telephone interview. Parents are asked to collect cheek cells

from themselves and their infants for DNA testing. Information gathered from both the interviews and the DNA specimens will be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

This request is submitted to obtain approval for current NBDPS activities for three more years with one change indicated below:

The CDC NBDPS currently remunerates participants for the biologic sample collection portion of the study. The cheek cell kits include $20.00 as an incentive to complete them and send them back. Overall, only 50% of participants completing the interview send in a completed cheek cell kit. While some subjects have stated that they do not wish to provide buccal samples due to their concerns about genetic testing, many subjects state that it is time consuming and difficult to remember to complete the kit and mail it back. An additional $20.00 incentive will be added that is linked to the return of the cheek cell kits. It is appropriate to have a higher level of compensation for those who spend the additional time to complete the cheek cell collection and return the kit than for those who only receive the kit and invest no time in further participation. This would make a total of $60.00 compensation ($20.00 for the completing of the interview, $20.00 for receiving the cheek cell kit and $20.00 for returning the kit) for subjects who choose to complete the entire study including the return of the cheek cell samples for herself and the baby or for just herself if the baby is deceased. While samples are requested from the father, the third incentive would not be dependent on the cooperation of the father since this may pose a hardship to those mothers who are not in regular contact with the father. Given the time and inconvenience required for the entire study (interview and cheek cell), a total of $60.00 is an appropriate level of compensation. The additional $20.00 money order is expected to increase the number of kits that are completed and returned and will be included in the thank you letter that each participant receives upon completion of the study. The estimated annualized burden is 1600 hours.

Survey	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
NBDPS Case/Control Interview	400	1	1
Cheek Cell Collection (mother/father/infant)	1,200	2	20/60
Completion of Entire Study	400	1	1

Dated: December 31, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–227 Filed 1–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Cholera and Other Vibrio Illness Surveillance Report (OMB 0920–0322)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Vibrio species are naturally occurring marine bacteria and an important cause of seafoodborne and wound associated illnesses. Certain Vibrio species (*e.g.*, V. cholera, V. parahemolyticus) cause dehydrating diarrheal illnesses. In addition to endemic cholera in the United States, illnesses caused by epidemic strains of cholera are reported among travelers returning from southern Asia and Latin America.

The data collected in this surveillance provides important information on the public health impact of vibriosis in the Gulf Coast States. FDA, which has regulatory responsibility for the safety of seafood, has requested these data to identify interventions that may reduce the burden of seafoodborne vibriosis. The data are also of interest to public and industry groups such as the Interstate Shellfish Sanitation Conference and the National Fisheries Institute.

The annual burden hours are estimated to be 50.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
Local Health Dept Staff	90	1	20/60
Health Care Facility Staff	45	1	20/60
Physicians	15	1	20/60

Dated: December 31, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–228 Filed 1–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605 as amended November 6, 1995; as last amended at 67 FR 46519, July 15, 2002).

This notice establishes a centralized Division of Grants Management Operations (DGMO) within the Office of Management and Program Support (OMPS), removes the grants management functions in the Bureau of Primary Health Care, the Bureau of Health Professions, the Maternal Child Health Bureau and the HIV/AIDS Bureaus and moves them to a newly established Division of Grants Management Operations within the OMPS; establishes a centralized Division of Independent Review within the OMPS; abolishes the Office of Peer Review in the Bureau of Health Professions; abolishes the Division of Grants and Procurement Management within the OMPS; establishes a Division of Procurement Management within OMPS; moves the HRSA Small and Disadvantaged Business function from the Office of Equal Opportunity and Civil Rights to the newly established Division of Procurement Management within OMPS; moves the Office of International Health Affairs to the Office of the Administrator; establishes a Division of Border Health within the Office of International Health Affairs; establishes the Office of Financial Policy and Oversight (OFPO); changes the name of and revises the functional statement of the Office of Field Operations which becomes the Office of Performance Review; revises the functional statement for the Office of Planning and Evaluation; and revises the functional statements for the Bureau of Primary Health Care, the Bureau of Health Professions, the Maternal Child Health Bureau, the HIV/AIDS Bureau, and the Office of Special Programs to reflect the above changes.

Section RA–00, Mission

The Health Resources and Services Administration (HRSA) directs national health programs which improve the health of the Nation by assuring quality health care to underserved, vulnerable and special-need populations and by promoting appropriate health professions workforce capacity and practice, particularly in primary care and public health.

Section RA–10, Organization

The Office of the Administrator is headed by the Administrator, Health Resources and Services Administration (OA) who reports directly to the Secretary. The OA includes the following components:

(1) Immediate Office of the Administrator (RA);

(2) Office of Equal Opportunity and Civil Rights (RA2);

(3) Office of Planning and Evaluation (RA5);

(4) Office of Communications (RA6);

(5) Office of Minority Health (RA9);

(6) Office of Legislation (RAE);

(7) Office of Financial Policy and Oversight (RAJ) and;

(8) Office of International Health Affairs (RAH)

1. In the Office of the Administrator establish the Office of Financial Policy and Oversight as follows:

Office of Financial Policy and Oversight (RAJ)

Provides national leadership in the administration and assurance of the financial integrity of HRSA's programs. Provides oversight over all HRSA activities to ensure that HRSA's resources are being properly used and protected. Specifically, OFPO: (1) Serves as the Administrator's principal source for grants policy and financial integrity of HRSA programs; (2) exercises oversight over the Agency's business processes related to assistance programs; and (3) facilitates plans, directs and coordinates the administration of HRSA grant policies.

2. Establish the Division of Financial Integrity in the Office of Financial Policy and Oversight as follows:

Division of Financial Integrity (RAJ1)

(1) Serves as the Agency's focal point for coordinating financial audits of grantees; (2) coordinates the external financial assessment of HRSA grantees and the resolution of any audit findings; (3) conducts the pre- and post-award review of grant applicants' and grantees' accounting systems; (4) conducts ad hoc studies and reviews related to the financial integrity of the HRSA business processes related to assistance programs; (5) serves as the agency's liaison with the Office of Inspector General for issues related to grants; (6) manages and maintains the Agency's hot line for reporting fraudulent fiscal activities; and (7) establishes an assessment model for grantee oversight.

3. Establish the Division of Grants Policy in the Office of Financial Policy and Oversight as follows:

Division of Grants Policy (RAJ2)

(1) Advises on grants policy issues and assists in the identification and resolution of grants policy issues and problems; (2) analyzes, develops and implements the Agency's grants policy; (3) coordinates the review of Departmental grants policies and ensures that Agency policies and procedures are revised to reflect appropriate changes; (4) conducts review of the limited competition process; (5) monitors and reviews the Agency's program application guidance; (6) serves as the grants liaison for the Agency's electronic systems and processes; (7) coordinates the development of standardized documents and processes for the Agency related to grants; (8) reviews Agency programs for proper interpretation and timely implementation and application of grants management policies; and (9) serves as the coordinator for General Accounting Office and OIG studies on HRSA Programs.

4. Delete the functional statement for the Office of Planning and Evaluation (RA5) in its entirety and replace as follows:

Office of Planning and Evaluation (RA5)

The OPE (1) Serves as the Administrator's primary staff unit for coordinating the agency's strategic, evaluation and research planning processes; (2) oversees communication and maintains liaison between the Administrator, other OPDIVs, higher levels of the Department and other Departments on all matters involving analysis of program policy undertaken in the Agency; (3) prepares policy analysis papers and other planning documents as required in the Administration's strategic planning process; (4) analyzes budgetary data with regard to planning guidelines; (5) collaborates in the development of budgets, performance plans, and performance reports required under the Government Performance and Results Act (GPRA); (6) coordinates activity related to the prevention agenda and

Healthy People activities; (7) analyzes and coordinates the information needs of the Agency; and (8) serves as the focal point for the advancement of managed care systems for safety net providers serving at-risk populations.

5. Delete in its entirety the functional statement for the Office of International Health Affairs in the OMPS and establish the Office of International Health Affairs (RAH) in the Office of the Administrator as follows:

Office of International Health Affairs (RAH)

The Office of International Health Affairs serves as a focal point within the Health Resources and Services Administration (HRSA) for leadership, coordination, and advancement of international health activities relating to health care services for vulnerable and at-risk populations and for training programs for health professionals. The Office carries out the following functions in coordination with the Department and State Department to the extent authorized by laws within the authority of HRSA. Specifically, the OIHA: (1) Provides leadership within HRSA for the support for international health in coordinating policy development with other Departmental agencies; (2) provides technical and other support to HRSA components as they interface with Departmental international health activities; (3) develops working relationships with private sector providers and HRSA grantees to assure mutual areas of cooperation, maximization of expertise and coordination as it relates to international health; (4) advises the HRSA Administrator on strategies to maximize the participation of the Agency and its components in international health programs and activities; (5) works with foundations, private agencies and other Federal, State, and local agencies for the effective development of policies and resources relating to health care for vulnerable populations world-wide; and (6) coordinates international travel and visitor programs within the jurisdiction of HRSA.

6. Establish the Division of Border Health within the Office of International Health Affairs as follows:

Division of Border Health (RAH1)

Provides leadership and direction to coordinate the Agency's assets in border regions. Specifically, DBH: (1) Assures that the Agency's engagement with regions of the border is strategic, performance based, builds partnerships and alliances, and maximizes utilization of Agency assets; (2) assures agency-wide coordination by establishing border health program policies and procedures including tracking mechanisms; (3) conducts management and evaluation studies to improve the health delivery system on the border; (4) serves as the secretariat and chair for the Agency's Border Health Workgroup; (5) plans, directs, and coordinates the Agency's border health activities; and (6) plans, coordinates and facilitates the agency agreements activities with border health issues.

7. Delete the functional statement for the Office of Equal Opportunity and Civil Rights (RA2) in its entirety and replace as follows:

Office of Equal Opportunity and Civil Rights (RA2)

Directs, coordinates, develops, and administers HRSA's equal opportunity and civil rights activities. Specifically: (1) Provides advice, counsel, and recommendations to HRSA personnel, including regional divisions, on equal opportunity and civil rights and represents HRSA in all equal employment opportunity (EEO) areas; (2) administers affirmative action programs designed to ensure equality of opportunity in employment; (3) manages the Civil Service complaints system and prepares final HRSA decisions; (4) manages the complaints system for Public Health Service (PHS) Commissioned Corps personnel under the provisions of PHS Personnel Instruction 6 and issues proposed dispositions; (5) develops and directs implementation of the requirements of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Americans With Disabilities Act, as they apply to recipients of HRSA funds; (6) provides technical assistance and guidance to HRSA on developing education and training programs regarding equal opportunity and civil rights; (7) approves settlement agreements and attorney fees; and (8) applies all applicable laws, guidelines, rules and regulations in accordance with those of the DHHS Office of Equal Employment Opportunity and Civil Rights.

8. Revise the functional statement of the Office of Management and Program Support as follows:

Office of Management and Program Support (RS)

Provides agency-wide leadership, program direction, and coordination to all phases of management. Specifically, OMPS: (1) Provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (2) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, human resources management, including labor relations, debt management, procurement management, real and personal property accountability and management, alternative dispute resolution and administrative services; (3) directs and coordinates the development of policy and regulations; (4) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (5) plans, directs and carries out the independent review of grant applications for all of HRSA's programs; (6) plans, directs and carries out the grants officer functions for all of HRSA's programs; (7) directs and coordinates the Agency's organization, functions and delegations of authority programs; and (8) administers the Agency's Executive Secretariat and committee management functions.

9. In the Office of Management and Program Support delete the functional statement for the Division Grants and Procurement Management and establish the Division of Grants Management Operations as follows:

Division of Grants Management Operations (RSA)

(1) Exercises the sole responsibility within HRSA for all aspects of Grant and Cooperative Agreement receipt and award processes; (2) participates in the planning, development, and implementation of policies and procedures for grants and other federal financial assistance mechanisms; (3) provides assistance and technical consultation to program offices in the development and interpretation of laws, regulations, policies, and guidelines relative to the Agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods and materials for the administration of the Agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews grantee financial status reports and prepares reports and analyses on the grantee's use of funds; (7) provides technical assistance to applicants and grantees on financial and administrative aspects of grant projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning and management decisions; and (9) participates in the development of program guidance and instructions for grant competitions.

10. Establish the Division of Procurement Management in the Office

of Management and Program Support as follows:

Division of Procurement Management (RS4)

Provides leadership in the planning, development, and implementation of policies and procedures for contracts. Specifically, DPM: (1) Exercises the sole responsibility within HRSA for the award and management of contracts; (2) provides advice and consultation of interpretation and application of the Department of Health and Human Services policies and procedures governing contracts management; (3) develops operating procedures and policies for the Agency's contracts programs; (4) establishes standards and guides for and evaluates contracts operations throughout the Agency; (5) coordinates the Agency's positions and actions with respect to the audit of contracts; (6) maintains liaison directly with or through Agency Bureaus or Offices with contractors, other organizations, and various components of the Department; and (7) provides leadership, guidance, and advice on the promotion of the activities in HRSA relating to procurement and material management governed by the Small Business Act of 1958, Executive Order 11625, and other statutes and national policy directives for augmenting the role of private industry, and small and minority businesses as sources of supply to the Government and Government contractors.

11. Establish the Division of Independent Review within the Office of Management and Program Support as follows:

Division of Independent Review (RS9)

(1) Plans, directs and carries out HRSA's independent review of applications for grants and cooperative agreement funding, and assures that the process is fair, open, and competitive; (2) develops, implements and maintains policies and procedures necessary to carry out the Agency's independent review/peer review processes; (3) provides technical assistance to Independent Reviewers ensuring that reviewers are aware of and comply with the appropriate administrative policies and regulations; (4) provides technical advice and guidance to the Agency regarding the independent review processes; (5) coordinates and assures the development of program policies and rules relating to the HRSA's extramural grant activities; and (6) provides HRSA Offices and Bureaus with the final disposition of all reviewed applications.

12. Change the name of the Office of Field Operations and the names of its Field Offices and revise its functions as follows:

Office of Performance Review (RE)

Section RF–00, Mission

The Mission of the Office of Performance Review (OPR) is to improve access to quality health care and reduce health disparities by effectively reviewing and enhancing the performance of HRSA-supported programs within communities and States.

Section RF–10, Organization

The OPR is comprised of a Headquarters unit and ten regional operating divisions. The Associate Administrator, who reports directly to the HRSA Administrator, heads the OPR. A Division Director, who reports directly to the Associate Administrator, heads each of the ten OPR regional operating divisions. The OPR is organized as follows:

1. Headquarters (RE)
2. Regional Divisions (RF)
   a. Boston Regional Division (RF12) serves Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
   b. New York Regional Division (RF13) serves New Jersey, New York, Puerto Rico and the United States Virgin Islands.
   c. Philadelphia Regional Division (RF11) serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.
   d. Atlanta Regional Division (RF21) serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
   e. Chicago Regional Division (RF 31) serves Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.
   f. Dallas Regional Division (RF 41) serves Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
   g. Kansas City Regional Division (RF32) serves Iowa, Kansas, Missouri and Nebraska.
   h. Denver Regional Division (RF42) serves Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
   i. San Francisco Regional Division (RF51) serves Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of the Marshall Islands and the Republic of Palau.
   j. Seattle Regional Division (RF52) serves Alaska, Idaho, Oregon and Washington.

Section RF–20, Function

Serves as the Agency's focal point for reviewing and enhancing the performance of HRSA-supported programs within communities and States. Specifically, OPR: (1) Tracks regional and State trends in public health, health care and health policy, analyzing the impact on HRSA-supported programs; (2) conducts grantee performance reviews, providing programmatic and business management assessments, recommendations, on-site technical assistance and best practice identification; (3) performs State and community strategic partnership reviews, examining the collective effectiveness of HRSA-supported programs and facilitating collaboration in addressing priority health needs; (4) provides recommendations and input on HRSA and selected Departmental program designs, policies and initiatives; and (5) exercises line management authority related to the general administrative and management functions of OPR.

13. Revise the functional statement for the Maternal and Child Health Bureau (RM) as follows:

Maternal and Child Health Bureau (RM)

Provides national leadership and policy direction for the Maternal and Child Health Bureau programs. These programs are designed to improve the health of women of childbearing age, infants, children, adolescents, and their families, of children with special health needs, and of persons with hemophilia. Specifically, MCHB: (1) Coordinates the planning, development, implementation and evaluation of the programs and activities of the Bureau; (2) facilitates effective, collaborative relationships with other health and related programs; (3) establishes a program mission, goals, objectives and policy with broad Administration guidelines; (4) serves as the focal point for managing the Bureau-wide strategic planning operation as it relates to long and short range programmatic goals and objectives for the Bureau; (5) arranges and provides technical assistance to assure that the grantees meet program expectations; (6) serves as principal contact to the Agency, the Department, Office of Management and Budget (OMB), and the White House on matters concerning the health status of America's mothers and children; and (7) provides information and reports on the Bureau's programs to public, health, education

and related professional associations, the Congress, other Federal agencies, OMB, and the White House.

14. In the Maternal and Child Health Bureau Office of Operations and Management delete the grants function and revise the Office of Operations and Management (RM1) as follows:

Office of Operations and Management (RM1)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program and administrative policy implementation and maintains close liaison with officials of the Agency, and the Office of the Secretary on matters relating to these activities. Specifically, OOM: (1) Serves as the Associate Administrator's and Bureau's principal source for management and administrative advice and assistance; (2) provides or serves as liaison for program support services and; (3) provides leadership on intergovernmental activities of the Bureau which requires central administrative direction or intergovernmental activities of the Bureau, which require central direction of cross-cutting administrative issues affecting program activities; (4) participates in the development of strategic plans, regulatory activities, policy papers, and legislative proposals relating to MCH programs; (5) plans, coordinates and facilitates the Bureau's agency agreements activities; (6) coordinates human resource activities for the Bureau; (7) provides guidance to the Bureau on financial management activities; (8) determines State allocations of MCH Block Grant funds based on formula and current census data; (9) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Administration's management policies, procedures and systems; (10) coordinates the Bureau's program and administrative delegations of authority activities; (11) provides staff services in the operational planning and program analysis; (12) is responsible for paperwork management functions, including the development and maintenance of bureau manual issuances; (13) provides direction regarding new developments in office management activities; and (14) coordinates Bureau funds and resources for grants, contracts and cooperative agreements.

15. In the Maternal and Child Health Bureau revise the functions of the Division of State and Community Health (RM6) as follows:

Division of State and Community Health (RM6)

In collaboration with MCHB Divisions and Offices, serves as the organizational focus for the administration of responsibilities related to the MCH Block Grant to States Program. Specifically, DSCH: (1) Provides national leadership, direction, coordination, and administrative oversight related to the development and management of the State MCH Block Grant annual reports; (2) based on reviews of State Block grant applications and annual reports submitted by States, develops, plans, manages and monitors a Bureau-wide program of technical assistance and consultation in collaboration with other Bureau Divisions and related health programs; (3) develops and manages a program for the collection, analysis and dissemination of National and State Information and data to various constituencies including the public, States, and Congress about the Block Grant to States Program; (4) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services in the Block Grant to States Program; (5) develops, plans, manages and monitors the abstinence only education grant program to the States; (6) develops, plans, manages and monitors the State Systems Development Initiative (SSDI) grant to the States program; (7) participates in activities related to the Special projects of Regional and National Significance (SPRANS) program to facilitate the dissemination of effective knowledge related to State MCH functions; (8) monitors interagency agreements of Federal assignees to State MCH programs; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, children with special health care needs and their families; (10) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements; and (11) develops Program Application and Guidance documents.

16. Delete the functional statement for the HIV/AIDS Bureau (RV) in its entirety and replace as follows:

HIV/AIDS Bureau (RV)

Provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the formulation of an overall strategy and policy for HRSA AIDS programs; (2) coordinates the internal functions of the Bureau and its relationships with other national health programs; (3) establishes AIDS program objectives, alternatives, and policy positions consistent with broad Administration guidelines; (4) provides direction and leadership for the Agency's AIDS grants and contracts programs; (5) reviews AIDS related program activities to determine their consistency with established policies; (6) represents the Agency and the Department at AIDS related meetings, conferences and task forces; (7) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems related to HIV/AIDS; (8) develops and administers operating policies and procedures for the Bureau; (9) directs and coordinates Bureau Executive Secretariat activities; (10) directs the Center for Quality; (11) serves in developing and coordinating Telehealth programs and in facilitating electronic dissemination of best practices in health care to health care professionals; (12) provides grantees/States with accurate and timely interpretations of the Bureau's program expectations, requirements, guidances, and Federal legislation; and (13) arranges and provides technical assistance to assure that the grantees meet program expectations.

17. In the HIV/AIDS Bureau delete the functional statement for the Office of Program Support (RV2) in its entirety and replace as follows:

Office of Program Support (RV2)

Plans, directs, coordinates and evaluates Bureau-wide administrative and management support activities. Specifically, OPS: (1) Serves as the Bureau's principal source for management and administrative advices and assistance; (2) assists in the development and administration of policies and procedures which govern the review and final recommendation for funding to the Associate Administrator; (3) provides guidance to the Bureau on financial management activities; (4) coordinates personnel activities for the Bureau and advises on the allocation of the Bureau's personnel resources; (5) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements, the Administration's management policies and procedures; (6) coordinates the

Bureau's delegations of authority activities; (7) manages the Bureau's performance management systems; (8) provides or arranges for the provision of support services such as supply management, space management, manual issuances, forms, records, reports, and supports civil rights compliance activities; (9) provides direction regarding technological developments in office management activities; and (10) manages the Bureau's executive secretariat functions.

18. In the HIV/AIDS Bureau delete the functional statement for the Office of Science and Epidemiology (RV4) in its entirety and replace as follows:

Office of Science and Epidemiology (RV4)

Serves as the Bureau's principal source on HIV epidemiologic surveillance, program data collection and evaluation, medical and biometric research, and the development of new models of HIV care. The Office coordinates with all HRSA HIV/AIDS programs on the development and implementation of science and epidemiology activities. Specifically: (1) Develops and directs long and short range scientific activities; (2) plans, directs, coordinates and administers the Bureau's annual program evaluation strategy; (3) designs and implements special scientific studies of the impact and outcomes of Bureau health care programs; (4) carries out data collection and analysis activities that document the clients and services of Bureau programs; (5) collects and maintains information on the costs and quality associated with the Bureau's health care programs; (6) directs and manages the implementation and evaluation of priority models of care through the Special Programs of National Significance (Title XXVI, Part F of the PHS Act), including developing Program Application and Guidance documents; (7) formulates and interprets program-related policies; (8) coordinates the documentation of all science, evaluation, and new models of care products with HRSA HIV/AIDS programs; (9) coordinates technical assistance plans and activities with the Division of Training and Technical Assistance and manages program specific technical assistance; (10) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other HHS components, Federal departments, universities, and other scientific organizations; (11) organizes, guides and coordinates the Bureau's scientific planning and development activities in epidemiology, research, and demonstrations; (12) plans and coordinates Bureau participation in scientific organizations, including scientific clearance of presentations and articles for publications; (13) studies and analyzes trends in health care, including availability, access distribution, organization, and financing to determine if the Bureau activities address HIV/AIDS issues in an effective, efficient manner; and (14) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Office programs.

19. In the HIV/AIDS Bureau delete the functional statement for the Division of Service Systems (RV5) in its entirety and replace as follows:

Division of Service Systems (RV5)

Administers Bureau programs and activities and manages funds and other resources related to the provision of coordinated comprehensive HIV health care and support services, including reimbursement for treatment with life-prolonging drugs, for persons with HIV/AIDS. Specifically: (1) Directs and manages the implementation of Parts A and B of Title XXVI of the PHS Act including Emergency Relief Grants (Title I), HIV CARE Grants (Title II), and State AIDS Drug Assistance programs; (2) provides program implementation proposals and plans, and the interpretation of legislation and regulations; (3) monitors HIV services planning and delivery program in States and Cities and provides administrative, strategic, and programmatic direction to grantees to encourage efficient, coordinated treatment of persons with HIV infection; (4) develops Program Application and Guidance documents; (5) develops requirements, guidance and monitors State and territorial programs for medical therapies established to ensure that these treatments are integrated into the system of health care services; (6) promotes the development of State treatment program formularies that include classes of drugs necessary for the proper treatment of people with HIV infection; (7) formulates and interprets program related policies; (8) coordinates technical assistance plans and activities with the Division of Training and Technical Assistance; and (9) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Division programs.

20. In the HIV/AIDS Bureau delete the functional statement for the Division of Training and Technical Assistance (RV7) in its entirety and replace as follows:

Division of Training and Technical Assistance (RV7)

Coordinates, designs, directs and administers HIV/AIDS-related planning, training, technical assistance and extramural authorities and activities within the Agency. Advises on training and education activities pertaining to the administration of the Bureau's programs. Specifically: (1) Directs and manages the implementation of the AIDS Education and Training Centers (AETC) program of the CARE Act, Title XXVI, Part F of the PHS Act; (2) identifies technical assistance needs and develops technical assistance packages, conducts programs, meetings, and activities to meet such needs; (3) convenes consultation meetings with grantees, providers, representatives of professional and political organizations, and advocacy groups; (4) develops Program Application and Guidance documents for the AETC program; (5) develops and manages mechanisms and resources to address technical assistance needs and support Division/Bureau technical assistance plans and programs; (6) formulates and interprets program-related policies; (7) coordinates and manages the Bureau's HIV-related managed care activities; (8) serves as the Bureau's focal points for advising and coordinating with advisory committees and other external organizations on policies regarding health care delivery and HIV/AIDS prevention, treatment, education and technical assistance; (9) develops outreach activities to assure that target populations are aware of the benefits and availability of HRSA HIV/AIDS programs; (10) provides program implementation proposals and plans, and the interpretation of legislation and regulations; and (11) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Division programs.

21. Revise the functional statement for the Bureau of Health Professions (RP) as follows:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization assumptions; (2) collects and analyzes data and disseminates

information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications to existing Departmental policies and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for promoting equity and diversity in access to health services and health careers for under-represented minority groups; (8) provides technical assistance, consultation and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides grantees/States with accurate and timely interpretations of the Bureau's program expectations, requirements, guidances, and Federal legislation; (10) coordinates with the programs of other agencies within the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) serves as a focus for technical assistance activities in the internal aspects of health personnel development; (13) administers the National Practitioner Data Bank Program; (14) administers the Healthcare Integrity and Protection Data Bank Program; (15) administers the Ricky Ray Hemophilia Relief Fund Program; (16) provides direction and leadership to the Children's Hospitals Graduate Medical Education (CHGME) Payment Program; (17) administers the National Health Service Corps Program which assures accessibility of health care in underserved areas; (18) plans the activities of the National Health Services Corps Advisory Council; (19) administers the Public Health Service Scholarship Training Program and the National Health Service Corps Scholarship Loan Repayment Program; (20) administers the designation of health professional shortage areas and medically-underserved populations; (21) administers the Community Scholarship Program; (22) administers the State Loan Repayment Program; (23) administers the Nursing Education Loan Repayment program; and (24) provides direction and leadership for the Federal Credentialing Program.

22. In the Bureau of Health Professions abolish the Office of Peer Review (RPG).

23. In the Bureau of Health Professions revise the functions of the Office of Program Support (RP1) as follows:

Office of Program Support (RP1)

Plans, directs, coordinates and evaluates Bureau-wide administrative management activities. Maintains close liaison with officials of the Bureau, Agency, the Office of Public Health and Science, and the Office of the Secretary on management and support activities. Specifically: (1) Serves as the Bureau's principal source for management and administrative advice and assistance; (2) provides advice, guidance and coordinates personnel activities for the Bureau; (3) directs and coordinates the allocation of personnel resources; (4) provides organization and management analysis, develops policies and procedures for internal operation and interprets and implements the Bureau's management policies, procedures and systems; (5) develops and coordinates Bureau program and administrative delegations of authority activities; (6) provides guidance to the Bureau on financial management activities; (7) provides Bureau-wide support services such as supply management, equipment utilization, printing, property management, space management, records management and management reports; (8) manages the Bureau's performance management systems; and (9) develops general guidance and criteria related to the Bureau's grant programs.

24. In the Bureau of Health Professions revise the functions of the Division of National Health Service Corps (RPH) as follows:

Division of National Health Service Corps (RPH)

Provides (1) strategic planning and overall program policy guidance and oversight to the National Health Service Corps (NHSC); (2) initiates national program and policy changes, including regulatory and statutory amendments to ensure NHSC consistency with evolving national health care policy; (3) supports the NHSC National Advisory Council (NAC); (4) provides national NHSC leadership, integration and coordination with HRSA and other Departmental programs serving or impacting the Nation's underserved communities and populations; (5) coordinates NHSC policy on primary and other health care manpower issues, and works with a wide variety of national, regional, State and local constituencies in ensuring their effective implementation; (6) directs and administers the Public Health Service Scholarship Training Program, the NHSC Loan Repayment Program and the NHSC Scholarship Program; (7) develops and implements program plans and policies and operating and evaluation plans and procedures; (8) monitors obligatory service requirements and conditions of deferment for compliance; (9) provides guidance and technical assistance for educational institutions on the NHSC scholarship program; (10) maintains liaison with, and provides assistance to, program-related public and private professional organizations and institutions; (11) coordinates financial aspects of programs with educational institutions; (12) develops program data needs, formats and reporting requirements including collection, collation, analysis and dissemination of data; (13) participates in the development of forward plans, and budgets including recruitment, deferment and service monitoring systems; and (14) develops Program Application and Guidance documents.

25. Revise the functional statement for the Bureau of Primary Health Care (RC) as follows:

Bureau of Primary Health Care (RC)

Provides national leadership in developing, coordinating, evaluating, and assuring access to comprehensive preventive and primary health care services and improving the health status of the Nations' underserved and vulnerable populations. Specifically, the Bureau: (1) Assesses the Nation's health care needs of underserved populations; (2) assists communities in providing quality health care services, demonstrating new and improved approaches for providing access to healthcare; (3) administers the Consolidated Health Center Program; (4) develops comprehensive integrated systems of care for underserved communities and populations; (5) decreases health disparities through the targeting of resources to those populations at increased risk of negative health outcomes; (6) promotes the integration of primary care services with mental health and dental health services; (7) develops innovative strategies for serving special populations and difficult to serve sub-populations; (8) provides leadership for promoting equity, diversity, and cultural competency in access to health

care services for underserved populations; (9) coordinates with various other organizations involved in health care access and utilization, integrated systems of care, and improvement of health status for underserved populations; (10) supports the efforts of other organizations in their efforts to meet the needs of vulnerable, under-served, and special populations; (11) provides policy leadership, programmatic direction and consultation on activities related to community-based primary health care; (12) administers the Black Lung Clinics Program and the Native Hawaiian Health Systems Program; (13) provides leadership and direction for the National Hansen's Disease Program; (14) administers a national health-care program in support of the Immigration and Naturalization Service; and (15) administers the Section 340B Drug Pricing Program.

26. In the Office of Special Programs (RR), delete the functional statement in its entirety and replace as follows:

Office of Special Programs (RR)

Provides the overall leadership and direction for the procurement allocation, and transplantation of human organs and bone marrow; programmatic, financial and architectural/engineering support for construction/renovation programs; operation of the Vaccine Injury Compensation Program and the State Planning Grants Program. Specifically: (1) Administers the Organ Procurement and Transplantation Network and the Scientific Registry of Transplant Recipients to assure compliance with Federal regulations and policies; (2) administers the National Marrow Donor Program in matching volunteer unrelated marrow donors for transplants and studying the effectiveness of unrelated marrow donors for transplants and related treatment; (3) develops and maintains a national program of grants and contracts to organ procurement organizations and other entities to increase the availability of various organs to transplant candidates; (4) manages national programs for compliance with uncompensated care and other assurances; (5) directs and administers Section 242 hospital mortgage insurance program (via inter-agency agreement with HUD) and HHS direct and guaranteed construction loan repayment; (6) directs and administers the construction/renovation/equipping of health care and other facilities; (7) directs and administers the National Vaccine Injury Compensation Program; and (8) directs and administers the State Planning Grants Program.

Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective December 23, 2002.

Dated: December 23, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–294 Filed 1–6–03; 8:45 am]

BILLING CODE 4165–15–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 25–26, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: The Hermosa Inn, 5532 North Palo Cristi Road, Scottsdale, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 30, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–265 Filed 1–6–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance Trust Fund Activity.

OMB Number: 1205–0154.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Form	Number of respondents	Frequency	Annual responses	Total annual responses	Average response time (hours)	Burden hours
ETA–2112	53	Monthly	12	636	0.5	318
ETA–8401	53	Monthly	12	636	0.5	318
ETA–8403	53	On occasion	6	318	0.5	159
ETA–8405	53	Monthly	12	636	0.5	318
ETA–8413	53	Monthly	12	636	0.5	318
ETA–8414	53	Monthly	12	636	0.5	318
Totals				3,498		1,749

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 303(a)(4) of the Social Security Act (SSA) and section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) require that all money received in the unemployment fund of a state be paid immediately to the Secretary of Treasury to the credit of the Unemployment Trust Fund (UTF).

Section 303(a)(5) of the SSA and section 3304(a)(4) of the FUTA require that all money withdrawn from the UTF be used solely for the payment of unemployment compensation, exclusive of the expenses of administration.

Section 303(a)(6) of the SSA gives the Secretary of Labor the authority to require the reporting of information deemed necessary to assure state compliance with the provisions of the SSA. Accordingly, the Secretary of Labor requires the following reports:

- ETA 2112: UI Financial Transactions Summary, Unemployment Fund.
- ETA 8401: Monthly Analysis of Benefit Payment Account.
- ETA 8405: Monthly Analysis of Clearing Account.
- ETA 8413: Income—Expense Analysis UC Fund, Benefit Payment Account.
- ETA 8414: Income—Expense Analysis UC Fund, Clearing Account.
- ETA 8403: Summary of Financial Transactions—Title IX Fund.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–278 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Marlene Howze on 202–693–4158 or E-Mail: *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Type of Review: Extension of a currently approved collection.

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On Occasion.

Number Of Respondents: 900.

Number of Annual Responses: 26,100.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 6,525.

Total Annualized Capital/Startup Cost: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10,440.00.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The OWCP district offices use the information provided on Form LS–206 to determine the payment status of a given case. If the information were not collected, the OWCP would have no way of determining whether compensation payments had been made by liable insurance carriers and self-insured employers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–279 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Ergonomics

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Establishment of the National Advisory Committee on Ergonomics (NACE); notice of meeting.

SUMMARY: The National Advisory Committee on Ergonomics is being established and chartered for a two year term. This committee is part of the Secretary's comprehensive approach for reducing ergonomics-related injuries and illnesses in the workplace. The

Secretary may ask NACE to advise her on such matters as ergonomic guidelines, research, and outreach and assistance. This notice announces the selection of 15 persons to serve as members of NACE and schedules the first NACE meeting. The public is encouraged to attend.

DATES: The Committee will meet in Washington, DC on Wednesday, January 22, 2003 from 9 a.m. until approximately 5 p.m.

ADDRESSES: The Committee will meet at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; Telephone (202) 628–2100.

Mail comments, views, or statements in response to this notice to MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax: (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2002, the Secretary of Labor announced her intention to establish a National Advisory Committee on Ergonomics to advise her in the following areas: (1) Various industry or task-specific guidelines; (2) identification of gaps in research applying ergonomic principles to the workplace; (3) current and projected research needs; (4) methods of providing outreach and assistance that will communicate the value of ergonomics to employers and employees; and (5) ways to increase communication among stakeholders on the issue of ergonomics. On May 2, 2002, OSHA published a notice in the **Federal Register** requesting nominations for membership on NACE (67 FR 22121).

II. Establishment

In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2) and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the National Advisory Committee on Ergonomics (NACE) is in the public interest, to advise the Secretary as to the performance of Departmental duties under the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq.* Notice is hereby given that NACE is established for a period of two years and that the charter has been filed in accordance with 41 CFR 102–3.70.

III. Appointment of Committee Members

Over two hundred nominations of highly qualified individuals were received in response to the Agency's request for nominations. Ergonomics involves a wide range of complex issues.

For that reason, the Secretary has selected the following individuals who have a wide range of experience concerning the issues to be examined by the Committee. The NACE members are:

Edward Bernacki, M.D., M.P.H., Associate Professor and Director, Johns Hopkins Univ. School of Medicine, Baltimore, Maryland.
Lisa M Brooks, C.I.E., Health and Safety Program Manager for International Paper, Memphis, Tennessee.
Paul A. Fontana, President/CEO for Work Rehabilitation, Inc., Lafayette, Louisiana.
Willis J. Goldsmith,. Esq., Jones, Day, Reavis & Pogue, Washington, DC.
Morton L Kasdan,. M.D., Clinical Professor of Surgery, University of Louisville, Louisville, Kentucky.
Carter J. Kerk, Ph.D., Associate Professor in Industrial Engineering, South Dakota School of Mines & Technology, Rapid City, South Dakota.
James L. Koskan, MS, CSP, Corporate Director of Risk Control, SUPERVALU INC., Minneapolis, Minnesota.
George P. LaPorte, Ergonomics Manager, NATLSCO Loss Control Services, Division of Kemper Insurance Companies, Lake Zurich, Illinois.
Barbara McCabe, Program Manager, Operating Engineers National Hazmat Program, Operating Engineers, Beaver, West Virginia.
J. Dan McCausland, Consultant and Director, Worker Safety and Human Resources, American Meat Institute, Madison, Wisconsin.
Audrey Nelson, Ph.D., RN, Center Director for VHA Patient Safety Center of Inquiry, Suncoast Development Research Evaluation Research Center on Safe Patient Transitions, Tampa, Florida.
Lida Orta-Anes, Ph.D., Associate Professor, Graduate School of Public Health, University of Puerto Rico, San Juan, Puerto Rico.
Roxanne Rivera, President and CEO, PMR Construction Services, Inc., Albuquerque, New Mexico.
W. Corey Thompson, National Safety and Health Specialist, American Postal Workers Union, Washington, DC.
Richard Wyatt, Ph.D., Associate Director, Aon Ergonomic Services, Huntsville, Alabama.

These individuals represent a broad range of interests, knowledge, and experience in the field of ergonomics, and the breadth of membership will assure that the Committee will be fairly balanced in terms of the points of view represented and the functions to be performed.

III. Meeting Agenda

The first meeting of NACE on January 22, 2003, will include an introduction of the Committee members and an overview and brief history of OSHA's activities related to ergonomics. The meeting will also include a discussion of OSHA's efforts to develop ergonomic guidelines, and presentations on enforcement, outreach, and research issues.

IV. Public Participation

Written data, views, or comments for consideration by NACE on the various agenda items listed above may be submitted, preferably with copies, to MaryAnn Garrahan at the address listed above. Submissions received by January 14, 2003 will be provided to the committee members for consideration. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee should notify MaryAnn Garrahan at the address noted above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Persons with disabilities requiring special accommodations should contact Veneta Chatman (telephone: (202) 693–1912; FAX (202) 693–1635) by January 14, 2003.

A transcript of the meeting will be available for inspection and copying in the OSHA Technical Data Center, Room N–2625 (see address section above) telephone: (202) 693–2350.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC, this 30th day of December 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–277 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc. Notice of Receipt of Amendment Request and Opportunity To Request a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 11, 2002, a request from Nuclear Fuel Services, Inc., to amend its NRC Special Nuclear Materials License SNM–124, to authorize (1) processing operations in the Blended Low-Enriched Uranium Preparation Facility (BPF) and (2) minor administrative changes. The staff hereby provides notice of the request and issues a notice of opportunity to request a hearing on the amendment application.

The request is the second of three license amendment requests planned to support operations associated with downblending and conversion of high-enriched uranium materials to low-enriched uranium oxides. NFS is currently manufacturing high-enriched nuclear reactor fuel at its facility in Erwin, Tennessee. NFS is constructing a new complex at the Erwin site to manufacture low-enriched nuclear reactor fuel. NFS is requesting this amendment to authorize operations at the BPF that will prepare low-enriched uranium solutions for use in the new complex. The BPF operations will be conducted within the existing facility because that facility is already authorized to handle high-enriched material. After the high-enriched material is downblended and converted to a low-enriched uranium solution, it will be transferred from the BPF to the new complex.

The October 11, 2002, amendment application contains an Integrated Safety Analysis (ISA) Summary for two of the eleven BPF operations. By letter dated October 14, 2002, NFS provided an ISA Summary addressing the remaining nine operations in the BPF. NFS excluded nine operations from the amendment request because NRC Special Nuclear Materials License SNM–124 already authorizes these operations in another building and NFS is relocating them to the BPF. By letter dated October 10, 2002, NFS provided revisions to their Emergency Plan to incorporate BPF operations. These three submittals comprise the content of the license amendment application. NFS also submitted revisions to their Fundamental Nuclear Material Control (FNMC) Plan by letter dated May 24, 2002, and revisions to their Physical Safeguards Plan by letter dated October 10, 2002. The FNMC Plan and Physical Safeguards Plan are being reviewed independently.

This application will be reviewed by the staff for conformance with 10 CFR parts 20, 70, 73, and 74, using NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility'' and other applicable agency regulations and guidance. If NRC approves the request, the approval will be documented in an amendment to NRC Special Nuclear Materials License SNM–124. However, before approving the request, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment (EA) or an Environmental Impact Statement.

An EA, dated June 28, 2002, was issued to support the first amendment request for this project and may be looked to for additional information.

II. Notice of Availability of Amendment Request

The following documents are available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room O–1–F–21, 11555 Rockville Pike, Rockville, MD 20852, or through the ADAMS computer system at *http://www.nrc.gov/reading-rm/adams.html* using the accession numbers listed below:

A. NFS License Amendment Request Dated October 11, 2002

1. Cover Letter and Attachment 1, Proposed Changes to License SNM–124 (ADAMS accession number ML022960038).
2. Attachment III, Non-Proprietary Version of ISA Summary, Part 1 of 2 (ADAMS accession number ML022960069).
3. Attachment III, Non-Proprietary Version of ISA Summary, Part 2 of 2 (ADAMS accession number ML023400228).

B. ISA Summary for BPF Processes Dated October 14, 2002

1. Cover Letter (ADAMS accession number ML023080301).
2. Attachment II, Non-Proprietary Version of ISA Summary, Part 1 of 2 (ADAMS accession number ML023090025).
4. Attachment II, Non-Proprietary Version of ISA Summary, Part 2 of 2 (ADAMS accession number ML023090170).

C. Environmental Assessment for First License Amendment Dated June 28, 2002 (ADAMS Accession Number ML021790068).

Attachments II and IV of the NFS license amendment request dated October 11, 2002, contain proprietary information and are being withheld from the public pursuant to 10 CFR 2.790. Attachment I of the ISA Summary for BPF Processes dated October 14, 2002, contains proprietary information and is being withheld from the public pursuant to 10 CFR 2.790. The Physical Safeguards Plan and the Fundamental Nuclear Material Control Plan are confidential restricted data, as defined in 10 CFR 25.5, and are not publicly available. In addition, the Emergency Plan Revisions are sensitive, homeland security information, and are not publicly available.

III. Notice of Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

A. By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

B. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

A. The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee 37650–9718. A copy of the request for hearing should also be sent

to the attorney for the licensee, Daryl Shapiro, c/o Shaw Pittman, L.L.P., 2300 N Street, NW., Washington, DC 20037; and

B. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

A. The interest of the requestor in the proceeding;

1. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

2. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

3. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Technical Contact

For further information, contact Mary T. Adams, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8–A–33, Washington, DC 20555. Telephone (301) 415–7249.

Dated at Rockville, Maryland, this 31st day of December, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–264 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027–MLA–5 ASLBP No. 03–807–01–MLA]

Sequoyah Fuels Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, see 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, see 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

Sequoyah Fuels Corporation, Gore, Oklahoma (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, Subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns requests for hearing submitted (1) on December 14, 2002, by Citizens Action for Safe Energy, Inc.; (2) on December 16, 2002, by the State of Oklahoma; (3) on December 16 by the Cherokee Nation; and (4) by fifteen other Oklahoma residents during December 2002. The requests were filed in response to a notice of consideration of an amendment request from Sequoyah Fuels Corporation to possess byproduct material, as defined in Atomic Energy Act section 11e.(2), at its Gore, Oklahoma facility site. The notice and opportunity for a hearing were published in the **Federal Register** on November 14, 2002 (67 FR 69,048).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR. 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 31st day of December 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–263 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of January 6, 13, 20, 27, February 3, 10, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered:

Week of January 6, 2003

There are no meetings scheduled for the Week of January 6, 2003.

Week of January 13, 2003—Tentative

Tuesday, January 14, 2003

10 a.m. Discussion of security Issues (Closed-Ex. 1).

2 p.m. Briefing on NRC Lessons Learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (Public Meeting) (Contact: Stacey Rosenberg, 301–415–1733).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of January 20, 2003—Tentative

Thursday, January 23, 2003

2 p.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of January 27, 2003—Tentative

There are no meetings scheduled for the Week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003

10 a.m. Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 10, 2003—Tentative

Monday, February 10, 2003

10 a.m. Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Michael Case, 301–415–1275)

This meeting will be webcast live at the web address—*http://www.nrc.gov*

Tuesday, February 11, 2003

10 a.m. Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: January 2, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–320 Filed 1–3–03; 12:17 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, December 13, through December 26, 2002. The last biweekly notice was published on December 24, 2002 (67 FR 78515).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 6, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 13, 2002, as supplemented November 20, 2002

Description of amendment request: The proposed amendments delete requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post-Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments

concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated November 13, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina

Date of amendment request: December 2, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for Administrative Controls in Section 5.0 concerning Responsibility, Unit Staff, Unit Staff Qualifications, and Controls of the High Radiation Area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a)(1), this analysis is provided to demonstrate that the proposed license amendment does not involve a significant hazard.

Conformance of the proposed amendment to the standards for a determination of no significant hazards, as defined in 10 CFR 50.92, is shown in the following:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences since the changes are purely administrative in nature.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Implementation of this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No physical changes are being made to the plant. Therefore, the introduction of any new accident scenarios does not exist. The amendment does not impact any plant systems that are accident initiators nor does it adversely impact any accident mitigating system. This amendment is purely administrative in nature.

(3) Does the proposed change involve a significant reduction in margin of safety?

No. Implementation of this amendment will not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. System[s] and components are not affected and therefore are capable of performing as designed. This amendment is purely administrative nature, it will have no effect on any safety margins.

Conclusion.

Based on the preceding analysis, it is concluded that the proposed license amendment does not involve a Significant

Hazards Consideration Finding as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for TS Table 3.3.2–1 Footnote (c) to correct an editorial error, TS 3.4.3 is revised to update the Reactor Coolant System Pressure-Temperature limits for use up to 34 Effective Full Power Years (EFPY) and TS 3.4.12 is revised to update the Low Temperature Over-Pressure limits for use up to 34 EFPY. Associated changes are also proposed for the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke has evaluated whether or not a significant hazards consideration is involved with the proposed amendments by focusing on the three standards set forth in 10 CFR 50.92, ''issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the reactor coolant system (RCS) pressure and temperature (P–T) limits and low temperature overpressure protection (LTOP) limits are developed utilizing the methodology of American Society of Mechanical Engineers (ASME) Section XI, Appendix G, in conjunction with the methodology of ASME Code Case N–641. Usage of these methodologies provides compliance with the underlying intent of 10 CFR [Part] 50 Appendix G and provides operational limits established to prevent non-ductile failure of the reactor vessel. The Loss of Coolant Accident analysis and other accident analyses in the Updated Final Safety Analysis Report (UFSAR) do not assume failure of the reactor vessel. The P–T and LTOP limits are not initiators or contributors to accident analyses addressed in the UFSAR. The proposed changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to RCS P–T limits and LTOP limits are proposed to prevent non-ductile failure of the reactor vessel. The proposed changes do not modify the RCS pressure boundary, nor make any physical changes to the facility. The proposed changes do not introduce any new mode of system operation or failure mechanism. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are developed utilizing the methodology of ASME Section XI, Appendix G, in conjunction with the methodology of ASME Code Case N–461. Usage of these methodologies provides compliance with the underlying intent of 10 CFR [Part] 50 Appendix G and provides operational limits established to prevent non-ductile failure of the reactor vessel. This Code case constitutes relaxation from the current requirements of 10 CFR [Part] 50 Appendix G. The alternate methodology allowed by the Code case is based on industry experience gained since the inception of the 10 CFR [Part] 50 Appendix G requirements and replaces some requirements that have now been determined to be excessively conservative. The more appropriate assumptions and provisions allowed by the Code case maintain a margin of safety that is consistent with the intent of 10 CFR [Part] 50 Appendix G. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, Duke concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendment would revise the Facility Operating License and Technical Specifications (TSs) to increase the licensed core thermal power level to 3114.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3071.4 MWt. The proposed power uprate involves the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, ''ECCS Evaluation Models,'' to Part 50 of Title 10 of the Code of Federal Regulations. In addition, changes would be made in TS Sections 1.1, 2.1, 2.3, 3.1, 3.4, 6.9, and the applicable TS Bases would be revised to account for the change in power level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed 1.4% increase in maximum core thermal power is based on the use of instrumentation that supports a reduction in the measurement uncertainty value assumed in certain safety analyses. The affected analyses now use an uncertainty value of 2% which was required by 10 CFR [Part] 50 Appendix K at the time that the plant was originally licensed. At that time, measurement of feedwater flowrate in the plant secondary side used differential pressure-type flow venturis. The plant secondary side thermal calorimetric is used to determine reactor thermal power. A June 2000 revision to 10 CFR [Part] 50 Appendix K permitted the use of lower uncertainty values in the affected analyses, if the reduced value can be justified. Entergy Nuclear Operations (ENO) has implemented the use of Caldon, Inc. Leading Edge Flowmeter (LEFM) technology to measure feedwater flowrate. The LEFM measures fluid velocity by measuring the transit time of ultrasonic pulses introduced into the fluid stream. The LEFM Check System implemented at Indian Point 2 has a demonstrated measurement accuracy of 0.6%. Based on this measurement accuracy, the licensed thermal power can be increased 1.4% by reducing the assumed uncertainty used in safety analyses

with respect to core thermal power from 2.0% to 0.6%. This results in a net increase in licensed reactor core thermal power; from 3071.4 MWt to 3114.4 MWt. The LEFM and the flow venturi instrumentation are used to collect data and there is no automatic initiation function performed by this instrumentation. Use of the LEFM instrumentation is therefore not an accident initiator and does not increase the probability of occurrence of an existing analyzed accident. Also, the LEFM instrumentation and the venturi instrumentation do not mitigate accidents so that the consequences of previously analyzed accidents are not increased.

Analyses and evaluations associated with the proposed change to core thermal power have demonstrated that applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report [FSAR] Chapter 14 safety analyses) will continue to be met for the proposed 1.4% increase in licensed core thermal power for Indian Point 2. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or the operational performance of any potentially affected system, component or analysis. Therefore, the probability of an accident previously evaluated is not affected by this change. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its intended safety function. Further, the radiological dose evaluations in support of this power uprate effort show that the current FSAR Chapter 14 radiological analyses are unaffected, and that the current dose analyses of record bound plant operation with the subject increase in licensed core thermal power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment increases the maximum allowed core thermal power through the use of feedwater flow instrumentation that supports a reduction in the measurement uncertainty assumed in certain safety analyses. The LEFM Check System instrumentation has greater measurement accuracy than the differential pressure-type flow venturi instrumentation that was originally used so that the measurement uncertainty assumed in certain analyses can be correspondingly reduced. Both the venturi and LEFM flow instrumentation provide data that is used by plant operators to monitor the thermal output of the plant. The instrumentation does not perform an automatic actuation function and there are no output signals to plant safety systems or control systems. Therefore, instrumentation malfunction or failure does not introduce new accident scenarios or equipment failure mechanisms. Operation, maintenance, or failure of either instrumentation system does not have an adverse effect on safety-related systems or any structures, systems, and components required for transient or accident mitigation.

Operating the plant at a new maximum core thermal power of 3114.4 MWt, which is 1.4% greater than the current maximum of 3071.4 MWt, is bounded by existing or updated analyses which demonstrate that established limits and acceptance criteria continue to be met. Operating at the new power level does not create new or different accident initiators and existing credible malfunctions are bounded by existing or updated analyses or evaluations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluations and analyses associated with the proposed increase in maximum core thermal power demonstrate that applicable acceptance criteria will continue to be met. The existing licensed maximum core thermal power level incorporates a 2% measurement uncertainty for the analysis of loss-of-coolant-accidents as originally required by Appendix K of 10 CFR [Part] 50. The regulations have subsequently been revised to allow the option of justifying smaller measurement uncertainties by using more accurate instrumentation to calculate reactor thermal power. Certain analyses that already assume a bounding core power level because of the 2% measurement uncertainty are not changed as a result of the proposed increase in core thermal power. Use of the LEFM instrumentation with improved measurement accuracy supports the use of a smaller measurement uncertainty assumption in the safety analyses. Other analyses were updated or evaluations were performed to demonstrate that nuclear steam supply and balance-of-plant systems and components will continue to perform, under normal and credible transient conditions, within established limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: November 21, 2002.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing a change to the Limerick Generating Station (LGS), Unit 2, Technical Specifications (TSs) contained in Appendix A to the Operating License. This proposed change will revise the TS section on safety limits to incorporate revised safety limit minimum critical power ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for LGS, Unit 2, Cycle 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Amendment 25 was approved by the NRC [Nuclear Regulatory Commission] in a March 11, 1999 safety evaluation report.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The GE–14 fuel is in compliance with Amendment 22 to ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which provides the fuel licensing acceptance criteria. The probability of fuel damage will not be increased as a result of this change. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. The new SLMCPRs are calculated using NRC approved methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Additionally, the GE–14 fuel is in compliance with Amendment 22 to ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which provides the fuel licensing acceptance criteria. The SLMCPR is

not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs, which includes the use of GE–14 fuel. The new SLMCPRs are calculated using methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change will not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Andersen.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 26, 2002.

Description of amendment request: The proposed amendments revise Technical Specification (TS) 3.1.3.1, Control Rod Operability,'' by adding required actions for scram discharge volume (SDV) vent and drain valves to align with those in NUREG–1433, ''Standard Technical Specification, General Electric Plants, BWR/4,'' Revision 2. Additionally, modifications are proposed to change TS 3.6.3, ''Primary Containment Isolation Valves,'' to clarify the relationship between TS 3.1.3.1 and TS 3.6.3 regarding SDV vent and drain valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram discharge volume (SDV) and control rod drive (CRD) system, including the associated SDV vent and drain isolation valves, are not initiators to any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed Technical Specification (TS) ensures that the SDV and control rods are capable of performing their function as described in the UFSAR; therefore, the mitigative functions supported by the SDV and control rods will continue to provide the protection assumed by the analysis. The addition of specific TS actions to be taken for inoperable SDV vent or drain isolation valves will not challenge the ability of the SDV and control rods to perform their design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the CRD system including the SDV isolation valves is within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the CRD system and SDV isolation valves.

Under the proposed TS changes, the SDV vent and drain lines may be unisolated under administrative control. This allows any accumulated water in the line to be drained, to preclude a reactor scram on SDV high level. This is acceptable since the administrative controls ensure the valve can be closed quickly, by a dedicated operator, if a scram occurs with the valve open. The 8-hour allowable outage time to isolate the line is based on the low probability of a scram occurring while the line is not isolated and unlikelihood of significant CRD seal leakage.

The proposed changes do not involve any physical change to structures, systems, or components (SSCs) and do not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these proposed changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by these proposed changes. Therefore, the consequences of previously analyzed accidents will not increase because of these proposed changes.

Based on the above discussion, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by these proposed changes. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is required to the procedures relied upon to respond to an off-normal event as described in the UFSAR. As such, no new failure modes are being introduced. The changes do not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes are acceptable because the operability of the SDV and SDV isolation valves is unaffected, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within assumed conditions. Operation in accordance with the proposed TS ensures that the SDV and control rods are capable of performing their functions as described in the UFSAR. Therefore, the support of the SDV and control rods in the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. The additions to TS for inoperable SDV vent and drain isolation valves will not challenge the ability of the SDV or control rods to perform their design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, CRD system, including the SDV vent and drain isolation valves, are within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the CRD system. This provides sufficient management control of the requirements that assure the control rods and CRD system are maintained in a highly reliable condition. Although there is an increase in allowable outage time, this increase was evaluated and determined not to be a significant reduction in a margin of safety.

The proposed TS Actions for inoperable SDV vent and drain isolation valves are reasonable and consistent with approved standards, guidance and regulations.

Based on the above discussion, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Andersen.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: June 4, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from ''* * * up to 24 hours to permit completion of the surveillance when the allowable (equipment inoperability) outage time limits of the ACTION requirements are less than 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours, and the risk impact shall be managed.'' The proposed amendment is consistent with TS Task Force traveler TSTF–358, which has been approved by the Nuclear Regulatory Commission (NRC). The TS Bases will be revised under the licensee's existing TS Bases control program to be consistent with the bases for TSTF–358.

Basis for proposed no significant hazards consideration determination: The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee reviewed the model NSHC presented in the **Federal Register** and concluded that it is applicable to Davis-Besse. The model NSHC determination was incorporated by reference into its application dated June 4, 2002, to satisfy the requirements of 10 CFR 50.91(a), and is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: December 9, 2002.

Description of amendment request: The proposed amendment utilizes the Alternate Source Term radiological calculations to update the design basis analysis in the Updated Safety Analysis Report for the Fuel Handling Accident. Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' was utilized in the development of the proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves implementation of the Alternative Source Term for the Fuel Handling Accident at the Perry Nuclear Power Plant (PNPP). There are no physical design modifications to the plant associated with the proposed amendment. The revised calculations do not impact the initiators of a Fuel Handling Accident in any way. They also do not impact the initiators for any other design basis events. Therefore, because design basis accident initiators are not being altered by adoption of the Alternative Source Term analyses, the

probability of an accident previously evaluated is not affected.

With respect to consequences, the only previously evaluated accident that could be affected is the Fuel Handling Accident. The Alternative Source Term is an input to calculations used to evaluate the consequences of an accident, and does not by itself affect the plant response, or the actual pathway of the radiation released from the fuel. It does however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. For the Fuel Handling Accident, the AST analyses demonstrate acceptable doses, within regulatory limits, after 24 hours of radiological decay, without credit for Containment/Fuel Handling Building integrity, filtration system operability, or Control Room automatic isolation. Therefore, the consequences of an accident previously evaluated are not significantly increased.

Based on the above conclusions, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a physical alteration of the plant (no new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed changes). Also, no changes are proposed to the methods governing plant/system operation during handling of recently irradiated fuel, so no new initiators or precursors of a new or different kind of accident are created. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed amendment.

Thus, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment is associated with the implementation of a new licensing basis for PNPP Fuel Handling Accidents. Approval of the change from the original source term to a new source term taken from Regulatory Guide 1.183 is being requested. The results of the accident analyses, revised in support of the proposed license amendment, are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies, as specified in Regulatory Guide 1.183. Safety margins have been evaluated and analytical conservatism has been utilized to ensure that the analyses adequately bound the postulated limiting event scenario. The dose consequences of the limiting Fuel Handling Accident remains within the acceptance criteria presented in 10 CFR 50.67, ''Accident Source Term,'' and Regulatory Guide 1.183.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the Control Room, are within corresponding regulatory limits. For the Fuel Handling Accident, Regulatory Guide 1.183 conservatively sets the Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) limits below the 10 CFR 50.67 limit, and sets the Control Room limit consistent with 10 CFR 50.67.

Since the proposed amendment continues to ensure the doses at the EAB, LPZ and Control Room are within corresponding regulatory limits, the proposed license amendment does not involve a significant reduction in a margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 23, 2002.

Description of amendment request: The proposed amendment would revise Crystal River Unit 3 Improved Technical Specifications (ITS) 4.2.1, ''Fuel Assemblies,'' and ITS 4.2.2, ''Control Rods,'' to permit the use of Framatome ANP M5 advanced alloy for fuel rod cladding and fuel assembly structural components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Florida Power Corporation (FPC) has evaluated the proposed License Amendment Request (LAR), which consists of the identified Technical Specification changes and exemption requests, against the criteria of 10 CFR 50.92(c). The Technical Specification changes are categorized as follows:

1. Modification of Section 4.2.1, DESIGN FEATURES, Fuel Assemblies, and to include the M5 advanced alloy for fuel rod cladding and fuel assembly structural material[.]

2. Removal of design information such as maximum fuel enrichment, nominal active fuel length, maximum individual rod weight, and details of Control Rod content. Adopting the wording from the Standard ITS.

3. Addition to ITS 4.2.1 of the following sentence: ''A limited number of lead test assemblies that have not completed representative testing may be placed in nonlimiting core regions.'' Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle (Cycle 14). This sentence is being added for consistency with NUREG 1430, Revision 2.

FPC has concluded that this proposed LAR does not involve a significant hazards consideration. The following is a discussion of how each of the criteria is satisfied.

(1) [Does not] [i]nvolve a significant increase in the probability or consequences of an accident previously evaluated.

M5 advanced alloy: Topical reports BAW–10227P–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR [Pressurized Water Reactor] Reactor Fuel,'' February 2000 and BAW–10179P–A, Revision 4, ''Safety Criteria and Methodology for Acceptable Cycle Reload Analyses,'' March 2001 provide the licensing basis for the Framatome ANP (FRA–ANP) advanced cladding and structural material, designated M5. The M5 material can be used for fuel rod cladding, as well as for fuel assembly spacer grids, fuel rod end plugs, and fuel assembly guide and instrument tubes. By letter dated August 2, 2001 (Reference 4), the NRC approved BAW–10179P–A, Revision 4, for referencing in license applications. BAW–10179P–A, Revision 4 incorporates BAW–10227P–A. The M5 material was shown in these documents to have equivalent or superior properties to the current Zircaloy-4 material. The cladding itself is not an accident initiator and does not affect accident probability. The M5 cladding has been shown to meet all 10 CFR 50.46 design criteria and, therefore, will not increase the consequences of an accident.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: This change moves design features from Improved Technical Specifications (ITS) to the Final Safety Analysis Report (FSAR) and other design documents and analyses. The Framatome ANP enhanced fuel design will involve increased rod weight and active fuel length. The approved Framatome ANP topical report, BAW–10179P–A, ''Safety Criteria and Methodology for Acceptable Cycle Reload Analyses,'' will continue to be used to ensure that the required safety limits for the fuel are satisfied. Therefore, the relocation of design information does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Addition of a limited number of lead test assemblies: This change is administrative in nature and is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, the approved Framatome ANP topical report BAW–10179P–A will be used to ensure that all applicable limits of the safety analysis are met and that the lead test assemblies are placed in nonlimiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. Therefore, use of lead test assemblies will not involve a significant

increase in the probability or consequences of an accident previously evaluated.

(2) [Does not] [c]reate the possibility of a new or different kind of accident from any accident previously evaluated.

M5 advanced alloy: Topical report BAW–10227P–A demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Therefore, M5 fuel rod cladding and fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: This change moves design features from ITS to the FSAR and other design documents and analyses or adds consistency with the standard ITS. The location of this information does not create the possibility of a new or different kind of accident from any accident previously evaluated. The approved FRA–ANP topical report, BAW–10179P–A will continue to be used to ensure that the required safety limits are satisfied. Therefore, these changes do not involve the possibility of a new or different kind of accident from any accident previously evaluated.

Addition of a limited number of lead test assemblies: This change is administrative in nature and it is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, they will be designed and manufactured to ensure compatibility with the co-resident fuel assemblies, core internal structures, and fuel handling and storage equipment. The approved Framatome ANP topical report BAW–10179P–A will be used to ensure that the lead test assemblies meet all applicable limits of the safety analysis and that the lead test assemblies are placed in non-limiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. Therefore, use of lead test assemblies will not involve the possibility of a new or different kind of accident from any previously evaluated.

(3) [Does not] [i]nvolve a significant reduction in a margin of safety.

M5 advanced alloy: The proposed changes will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. The M5 alloy is expected to perform similarly or better [than] Zircaloy-4 for all normal operating and accident scenarios, including both non-LOCA [loss-of-coolant accident] and LOCA scenarios. For LOCA scenarios, where the slight differences in M5 material properties relative to Zircaloy-4 could have some impact on the overall accident scenario, plant-specific LOCA analyses will be performed prior to the use of fuel assemblies with fuel rods or fuel assembly components containing M5. These LOCA analyses, required by ITS 5.6.2.18, ‘‘Core Operating Limits Report (COLR),’’ will demonstrate that all applicable margins of safety will be maintained by the use of the M5 alloy.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: Approved methodologies will be used in the cycle-specific safety analysis to evaluate the use of the M5 advanced alloy, and account for various assembly differences (various rod weights and active fuel lengths). The location of the design information does not affect the margin of safety.

Addition of a limited number of lead test assemblies: This change is administrative in nature and is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, the approved Framatome ANP topical report BAW–10179P–A will be used to ensure that all applicable limits of the safety analysis are met and that the lead test assemblies are placed in nonlimiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. There will be no significant reduction in the margin of safety when a limited number of lead test assemblies are utilized.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 25, 2002.

Description of amendment request: The proposed license amendment would modify plant Technical Specifications (TSs) and the associated spent fuel pool (SFP) criticality analyses to eliminate credit for the Boraflex™ neutron absorber in SFP fuel storage racks and credit specific rules to control fuel assembly positioning in the SFP racks. TS 3.9.11 is revised to add a Limiting Condition for Operation for the SFP soluble boron concentration and require periodic surveillance of this parameter. This submittal provides justification for removing the description of the poison material in the spent fuel racks from Section 5 of the Unit 1 TSs, that was requested to be added by the licensee's cask pit spent fuel storage rack submittal dated October 23, 2002. In addition, a new SFP dilution analysis was performed that supports the criticality analysis requirement for a minimum soluble boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to eliminate reliance on Boraflex™ and to credit SFP soluble boron for reactivity control in the spent fuel pool storage racks was evaluated for impact on the following previously evaluated events:

- A fuel handling accident (FHA)
- A fuel mispositioning event
- A cask drop accident
- A loss of spent fuel pool cooling

The proposed amendment does not modify the facility. A new criticality analysis credits existing soluble boron in the SFP water and specific fuel positioning rules for reactivity control, without requiring any physical changes to the fuel storage racks. The amendment does not change any rack module location or any module's designation as Region 1 or Region 2 storage. There is no significant increase in the probability of a fuel handling accident in the SFP that is caused by crediting soluble boron and new fuel positioning rules, rather than Boraflex™, for reactivity control. The probability of a fuel handling accident is a function of the equipment design and procedures used when handling irradiated fuel. Neither of these features is affected when soluble boron, instead of Boraflex™, is credited for reactivity control in the SFP.

There is no increase in the probability of an accidental fuel assembly mispositioning when crediting the presence of soluble boron in fuel pool water for reactivity control. Fuel assembly selection and manipulation will continue to be controlled by approved fuel handling procedures; these procedures require the identification of a verified target location prior to grappling the assembly. Fuel placement will be in accordance with the revised TS.

There is no increase in the consequences of either an FHA or an accidental mispositioning of a fuel assembly into the SFP racks. Consequences of a FHA are not increased because the proposed amendment does not change the fuel fission product inventory, local meteorological conditions, or the fission product partition factor provided by fuel pool water. The consequences of an accidental misload are not increased because the criticality analysis demonstrates that the fuel array will remain sub-critical, even if the pool contains a boron concentration below the minimum level required by Technical Specifications. The TS will ensure that an adequate SFP soluble boron concentration is maintained for all conditions.

The proposed fuel positioning rules do not cause the total radionuclide inventory present in the spent fuel pool to increase, or

alter the type or mass of casks that may be placed in the fuel pool, or alter any facet of operation of the spent fuel cask crane. No characteristics of the existing spent fuel cask drop analysis for Unit 1 are affected by the proposed fuel positioning rules or by credit for soluble boron. Therefore, there is no increase in either the probability or the consequences of a cask drop accident caused by this change.

The proposed change does not increase either the probability or the consequences of a loss of normal SFP cooling. The proposed fuel positioning rules do not require any interaction with the fuel pool cooling system. Credit for a portion of the existing soluble boron concentration does not change its interaction with the fuel pool cooling system. The ability to detect and mitigate a loss of SFP cooling event is unchanged, and the revised criticality analysis considered the effects of boiling in the SFP and found them acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not modify the physical plant, nuclear fuel, or the design function and operation of the spent fuel pool storage racks at St. Lucie Unit 1. A TS controlled minimum concentration of soluble boron has always been required in the St. Lucie Unit 1 spent fuel pool; as such, the possibility of an inadvertent fuel pool dilution event has always existed. However, the spent fuel pool dilution analysis that accompanies this submittal demonstrates that no credible dilution event could increase fuel pool reactivity such that the effective neutron multiplication factor (k_{eff}) exceeds 0.95. Therefore, implementation of credit for soluble boron to control reactivity in the SFP will not create the possibility of a new or different type of criticality accident.

The limiting fuel assembly mispositioning event does not represent a new or different type of accident. The mispositioning of a fuel assembly within the fuel storage racks has always been possible. The locations of SFP rack modules and the specific modules assigned to each storage region remain unchanged; analysis results show that the storage racks remain subcritical, with substantial margin, following a worst case fuel misloading event. Therefore, a fuel assembly misload event that involves new fuel storage arrangements required by the criticality analysis does not result in a new or different type of criticality accident.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. The revised fuel positioning requirements proposed by this license amendment provide sufficient safety margin to ensure that the spent fuel pool storage racks will always remain subcritical. To comply with the requirements of 10 CFR 50.68 when crediting soluble boron, the current TS reactivity limit for the fuel storage racks (*i.e.,* k_{eff} less than or equal to 0.95 when flooded with unborated water) will be replaced with two separate limits (k_{eff} less than 1.0 when flooded with unborated water, and k_{eff} less than or equal to 0.95 when flooded with water containing 500 ppm boron).

The proposed amendment maintains the 0.95 reactivity limit by a combination of restrictions on fuel characteristics and fuel positioning, storage cell geometry and by crediting a portion of the soluble boron in the SFP, rather than by crediting Boraflex.

The proposed license amendment does not reduce the margin of safety provided by the soluble boron normally present in fuel pool water; the TS minimum permissible boron concentration is not decreased. The TS minimum required value of 1720 ppm is substantially greater than the 500 ppm value required by the updated criticality analysis to assure k_{eff} remains = 0.95 for non-accident conditions; it is also substantially greater than the soluble boron concentration necessary to compensate at a 95% probability, with a 95 percent confidence for the limiting postulated reactivity anomaly in the fuel pool storage racks.

No credible dilution of the fuel pool can result in an SFP soluble boron concentration less than the minimum value required by the criticality analysis. Therefore, an inadvertent dilution event can not challenge safety margins.

Based on these evaluations and the supporting analyses, operating the facility with the proposed amendment does not involve in a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: April 22, 2002, as supplemented on December 5, 2002.

Description of amendment request: The proposed amendment would allow removal of the upper half of the SNEF containment vessel and make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that Technical Specification Change Request No. 62 involves no significant hazard consideration as defined in 10 CFR 50.92.

1. The proposed changes to the SNEC Technical Specifications do not involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the safety analysis report.

As described in the change to delete Technical Specification 1.1.2, radiation levels inside the Containment Vessel will be below that necessary to maintain the Containment Vessel as an Exclusion Area. Further as required by modified Technical Specification 2.1.1 ventilation controls will be established to monitor and control any potential releases of airborne radioactivity during activities involving removal of the upper dome. Finally an analysis has been performed to determine the dose to a maximally exposed individual due to an accidental release while cutting the Containment Vessel. In developing a source term for the event it was assumed that following the concrete removal process the interior surfaces of the upper Containment Vessel dome was homogeneously coated with concrete dust. NUREG 1507 ''Minimum Detectable Concentrations with Typical Radiation Survey Instruments for Various Contaminants and Field Conditions'' describes an experiment to determine the attenuation effects due to dusty conditions. The maximum dust loading presented was 9.99 mg/cm^2 for soil. This value was converted to concrete dust by comparing the relative densities of the material (1.5 g/cm^3 for soil and 2.3 g/cm^3 for concrete) or 15.3 mg/cm^2. This amount of dust coating the internal surfaces of the Containment Vessel dome (9.05E6 cm^2) results in 299 pounds of dust being left in the Containment Vessel.

Table 1 provides the mix of isotopes remaining at the SNEC Facility based on the most recent survey results and isotope decay. During the removal operation a resuspension factor of 1.9E–2/m (as described in NUREG/CR 0130 ''Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station'', Volume 2, page J–27) was selected to represent the amount of concrete dust going airborne. This parameter is about one order of magnitude larger than that used in any other accident analyses described in the NUREG. This entire volume of dust was assumed to be released, unfiltered, directly to the environment.

An accident dispersion factor (c/Q) of 3.41E–3 sec/m^3, was also selected as it is the highest, thus most conservative, value used in the SNEC Facility Offsite Dose Calculation Manual (ODCM). Additionally composite dose conversion factors were selected from

Table 5–1 of EPA 400–R–92–001 ''Manual of Protective Action Guides and Protective Guides for Nuclear Incidents'' (US EPA, May 1992).

Based on the above a calculated dose of 3.23E–4 mrem to the maximally exposed individual represents a conservative estimate for an accidental release. For comparison Section 3.1 of the SNEC Facility USAR estimated the dose from an unfiltered release due to a material handling event of 1.5 mrem to the maximally exposed individual.

Thus this proposed change does not involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the SNEC Facility USAR.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the probability of occurrence or consequences of an accident or malfunction of equipment important to safety.

2. The proposed changes to the SNEC Technical Specifications will not create the possibility for an accident or malfunction of a different type than any previously evaluated in the safety analysis report.

As described in the response to item 1 above, the limiting accidental release during segmentation of the Containment Vessel dome involves the direct release of radioactive material to the environment. This event is similar to both a material handling event as described in Section 3.1 of the SNEC Facility USAR, and loss of engineering controls during segmentation as described in Section 3.4 of the SNEC Facility USAR. Thus the possibility of a new accident is not created.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the possibility of an accident or malfunction of a different type.

3. The changes will not involve a significant reduction in the margin of safety as defined in the basis for any technical specification for SNEC. The SNEC Facility Technical Specifications do not contain a defined margin of safety. However the implied margin of safety is to protect members of the public from exposure to radioactive material.

At the point in time that these Technical Specifications would take affect general radiation levels in the SNEC Facility Containment Vessel would be such that the Containment Vessel could be opened for unrestricted use as defined in 10 CFR 20.1301. Additionally the dose to a maximally exposed individual from an accidental release during removal of the Containment Vessel dome is several orders of magnitude below that from the limiting accidents defined in the SNEC Facility USAR. Thus the margin of safety is not reduced.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the margin of safety as defined in the basis for any technical specification for SNEC.

The NRC staff has reviewed the analysis of the licensees and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Program Director: William D. Beckner.

TABLE 1.—MAXIMUM EXPOSED INDIVIDUAL DOSE FROM CUTTING THE CV

Isotope	CV concrete activity (Ci) per table 4.13 SNEC char. report	Fraction remaining as dust (uCi)	CV wall area concetration (uCi/m) [2]	CV air concetration (uCi/m) [3]	Instantaneous release rate (uCi/sec) [4]	Concentration (uCi/cm) [3]	DCF [7]	Offsite dose (mrem)
Am−241	8.24e−05	4.68e−03	5.17e−06	9.83e−08	2.93e−04	9.99e−13	1.47e+05	1.47e−04
Co−60	4.60e−02	2.61e+00	2.89e−03	5.49e−05	1.63e−01	5.57e−10	7.50e+01	4.18e−05
Cs−137	2.38e−01	1.35e+01	1.49e−02	2.84e−04	8.46e−01	2.88e−09	1.14e+01	3.28e−05
C−14	5.74e−03	3.26e−01	3.60e−04	6.84e−06	2.04e−02	6.96e−11	6.94e−01	4.83e−08
Eu−152	1.42e−03	8.07e−02	8.91e−05	1.69e−06	5.05e−03	1.72e−11	7.50e+01	1.29e−06
H−3	1.29e−01	7.33e+00	8.10e−03	1.54e−04	4.58e−01	1.56e−09	2.14e−02	3.34e−08
Ni−63	3.93e−02	2.23e+00	2.47e−03	4.69e−05	1.40e−01	4.76e−10	2.11e+00	1.01e−06
Pu−239	5.24e−05	2.98e−03	3.29e−06	6.25e−08	1.86e−04	6.35e−13	1.44e+05	9.17e−05
Pu−241	1.84e−04	1.05e−02	1.15e−05	2.19e−07	6.54e−04	2.23e−12	2.75e+03	6.13e−06
Sr−90	1.59e−04	9.03e−03	9.98e−06	1.90e−07	5.65e−04	1.93e−12	4.44e+02	8.56e−07
Total	4.60e−01	2.61e+01			1.63e+00			2.70e+05

[1] Fraction remaining determined by: (299 lbs dust/5.26E6 lbs total concrete in CV) × 1E6 uCi/Ci × CV concrete activity.
[2] Area concentration determined by dividing dust fraction remaining by 9.05E2 m^2 (surface of CV shell being removed).
[3] Air concentration determined by multiplying CV wall area activity by 1.9E−2/m (NUREG 0130 resuspension factor for dust sweeping).
[4] Calculated by multiplying CV air specific activity by CV volume (2.98E3 m^3) instantaneously released in one second.
[5] Maximum atmospheric dispersion factor (X/Q) is 3.41E–3 sec/m^3 at the site boundary (200 meters) and in Sector N per SNEC ODCM Revision 5.
[6] Calculated by multiplying X/Q × activity released in uCi/sec × 1e−6 m^3/cm^3.
[7] Per EPA 400–R–92–001, Table 5–1.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 10, 2002.

Description of amendment request: This proposed amendment would replace the fire protection (FP) requirements contained in Facility Operating License (FOL) Section 2.C.(4) with the standard fire protection FOL condition recommended by Generic Letter 86–10, Section F, adapted to Cooper Nuclear Station (CNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would revise the CNS Operating License condition concerning

the FP program and its change process. It does not alter the FP requirements in the FHA [fire hazard analysis] or in the USAR [updated safety analysis report] including the assumptions underlying them. Neither does it alter SSCs [structures, systems or components] relied on by analyses to mitigate accidents or special events. Since it does not change any of the FP requirements or analyses, this proposed amendment does not introduce a new initiator for any of the accidents analyzed in the CNS USAR or considered therein. Because it does not specifically change any FP requirements or mitigating SSCs, this proposed amendment does not introduce a new mechanism for degrading the mitigating features considered for the accidents analyzed. By introducing no new accident initiators and no new mechanisms for degradation of mitigating features, no significant increase in the probability or consequences of an accident previously evaluated is involved in the proposed change. Therefore, the proposed change does not result in a significant increase in radiological doses for any Design Basis Accident and does not result in a significant increase in the types or amounts of any effluents that may be released off-site.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not physically change the fit, form, or function of any SSC credited in the accident analyses or in the FHA, Technical Requirements Manual (TRM), or the USAR. The proposed change does not alter assumptions or requirements used in the FHA, TRM, or USAR, nor does it affect the CNS Fire Protection program. It does not, therefore, alter the FP program or affect the plant's ability to achieve and maintain safe shutdown in the event of a fire, and it does not result in a reduction in the level of fire protection of the facility. Because it does not change FP requirements, the FP program or fire-mitigating SSCs, this proposed change does not create the possibility of a new or different kind of accident from those previously evaluated for CNS.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed amendment does not alter the design features of the approved FP plan. The proposed amendment does not alter administrative controls in the CNS Fire Protection program necessary to ensure required performance of physical barriers during anticipated operational occurrences and postulated accidents. The proposed change does not alter the NRC approved Fire Protection program as described in FP SER [safety evaluation report] dated May 23, 1979, SER Supplement 1 dated November 21, 1980, SER dated September 21, 1983, SER dated April 16, 1984, SER dated August 21, 1985, SER dated April 10, 1986, SER dated November 7, 1988, SER dated August 15, 1995. It does not affect the USAR, the TRM, the FHA or the commitments contained therein. It does not physically change the fit, form, or function of any SSC credited in the accident analyses or in these documents. Because it does not change the requirements, plan or mitigating SSCs, this proposed change does not involve a significant reduction in a margin of safety.

In summary, the proposed amendment does not involve a significant increase in the probability or consequences of an accident or creates the possibility of a new or different kind of accident or involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 22, 2002.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS), Section 4.6, ''Periodic Testing of Emergency Power System.'' This proposed amendment would allow KNPP to inspect the diesel generators (DGs) at least once per refueling frequency either while the plant is operating or during a refueling outage. Current TS requires an inspection during the refueling outage without exception. In addition, the proposed amendment would allow KNPP to make administrative changes to TS Section 4.6. The proposed change provides operational flexiblity in the schedule of maintenance activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The DGs are accident mitigating equipment, not accident initiating equipment. Consequently, there will be no impact on any accident probabilities by the approval of the requested amendment.

The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. Consequently, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to off-site or on-site dose as the result of an accident.

The format, typographical, grammatical, and standardized naming convention changes in addition to the WORD conversion are administrative in nature and therefore have no impact on accident initiators or plant equipment.

Based on the above, the proposed administrative changes and permitting DG inspections to be performed during plant operation does not involve a significant increase in the probabilities or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident mechanisms would be created as a result of NRC approval of this amendment request since no changes are being made to the plant that would introduce any new accident mechanisms. Equipment would be operated in the same configurations with the exception of the mode in which the inspection is credited. The inspection will be performed within the current approved Technical Specification limiting condition for operation (LCO). This amendment request does not impact any plant systems that are accident initiators or adversely impact any accident mitigating systems.

The proposed administrative changes do not involve any modifications to the physical plant or operations. Administrative changes do not contribute to accident initiators nor do they produce a new accident scenario. Based on the above, implementation of the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include fuel cladding, the reactor coolant system, and the containment system. The proposed change to the inspection timing for the DGs do not affect the operability requirements for the DGs, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this license amendment request and therefore does not involve a significant reduction in the margin of safety.

The administrative changes do not affect plant equipment or operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW., Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: August 27, 2002.

Description of amendment requests: The proposed license amendments would revise the term ''minimum measured flow per loop'' to ''measured loop flow'' in the allowable value and nominal trip setpoint for the Reactor Coolant Flow-Low reactor trip function contained in Table 3.3.1–1, ''Reactor Trip System Instrumentation,'' of Technical Specification (TS) 3.3.1. In addition, the proposed amendments would allow for an alternate method for the measurement of reactor coolant system (RCS) total volumetric flow rate through measurement of the elbow tap differential pressures on the RCS primary cold legs. The use of elbow tap differential pressures normalized to Diablo Canyon Power Plant Cycle 1 and 2 precision flow calorimetrics would improve the accuracy of the RCS flow measurement through reduction of the effect of hot leg temperature streaming that is present in the current flow calorimetric method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the Technical Specification (TS) 3.3.1 Table 3.3.1–1 term ''minimum measured flow per loop'' to ''measured loop flow'' in the allowable value and nominal trip setpoint for the Reactor Coolant Flow-Low reactor trip function and allows an alternate method for the measurement of reactor coolant system (RCS) total flow to meet TS surveillance requirement (SR) SR 3.4.1.4 through measurement of the elbow tap differential pressures on the RCS primary cold legs.

The change will not increase the probability of an accident previously evaluated because adequate RCS flow will still be assured. The Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint are accident mitigation functions and are not an accident initiator. The elbow tap method to measure RCS flow and the change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function do not involve a plant modification.

For the elbow tap method to measure RCS flow, sufficient margin exists to account for all reasonable instrument uncertainties and therefore the RCS flow will continue to be maintained at a value which is bounded by the design basis accident initial conditions. The change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint does not change a design basis accident initial condition or the conditions at the time of reactor trip during a design basis accident and therefore has no adverse effect on the design basis accidents which credit the Reactor Coolant Flow-Low reactor trip setpoint.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint and the proposed elbow tap method to measure RCS flow will not create the possibility of a new or different type of accident from any previously evaluated. There are no physical changes being made to the plant and there are no changes in operation of the plant that could introduce a new failure mode, creating an accident which has not been evaluated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint and the proposed elbow tap method to measure RCS flow will not reduce the margin of safety. For the proposed elbow tap flow method, sufficient margin exists to account for all reasonable instrument uncertainties and thus the RCS flow will continue to be maintained at a value which is bounded by the design basis accident initial conditions, and no adverse effect on the plant response to design basis accidents is created. The change in the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint does not change a design basis accident initial condition or the conditions at the time of reactor trip during a design basis accident, and therefore has no effect on the plant response to design basis accidents which credit the Reactor Coolant Flow-Low reactor trip setpoint. Since the change does not affect the response to design basis accidents, it does not result in a decrease in departure from nucleate boiling margin or reactor coolant system peak pressure margin for the design basis accidents.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 1, 2002.

Description of amendment requests: The proposed license amendments would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' and TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation'' as follows: (1) Revise both the RTS and ESFAS instrumentation TS and TS Bases to change or clarify the allowances for bypassing and tripping tested channels with other channels inoperable; (2) remove Surveillance Requirement 3.3.1.10 from Function 16.b, ''Turbine Stop Valve Closure;'' (3) correct the nominal trip setpoint value for Function 16.b, ''Turbine Stop Valve Closure;'' (4) correct the allowable value for the Function 18.f, ''Turbine Impulse Chamber Pressure, P–13;'' and (5) remove and relocate the nonsafety-related turbine trip function from Function 5 of Table 3.3.2–1, ''Turbine Trip and Feedwater Isolation.'' This function will be relocated to other owner-controlled documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes in the required action statements in the Limiting Conditions for Operation (LCOs) for the allowable surveillance testing configurations for both the reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instruments will not change the probability or consequences of an accident previously evaluated.

The proposed surveillance testing configuration changes only clarify available surveillance testing configurations and

limitations on those configurations. The changes do not modify how the RTS and ESFAS functions respond to any accident condition. These surveillance testing configurations provide greater flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident.

Previous Diablo Canyon Power Plant (DCPP) submittals have been approved providing for the capability of surveillance testing in trip and/or in bypass. Surveillance testing in bypass is considered the preferred method for most Eagle 21 instruments. However, where testing by tripping a single channel without causing a function actuation is acceptable, that capability was also maintained.

Although some of the changes may appear to add new allowable surveillance testing configurations, all of the proposed configurations are based on the application of the intent behind the existing Technical Specification (TS) wording. The limitations on surveillance testing configurations provided by the proposed changes are to ensure that there are no spurious actuations and that during testing a valid signal will cause the associated functions to actuate as designed. None of these configurations place the associated function in a logic that has not been previously evaluated and approved.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not change the probability or consequences of an accident previously evaluated since these switches are not subject to drift. These limit switches are installed with fixed limit setpoints that actuate based on valve position and they are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the remaining trip actuation device operational test (TADOT). As a result, performing only the TADOT provides all necessary assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint is administrative in nature and will not change the probability or consequences of an accident previously evaluated. This was an oversight in the Improved Technical Specification (ITS) review and conversion process. The proposed change only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, ''Turbine Impulse Chamber Pressure, P–13,'' is administrative in nature and will not change the probability or consequences of an accident previously evaluated. The P–13 intended trip setpoint has always been maintained at 10 percent and remains unchanged. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 will not change the probability or consequences of an accident previously evaluated. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions. The proposed changes in this LAR [License Amendment Request] do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in the required action statements in the LCOs for the allowable surveillance testing configurations for both the RTS and ESFAS instruments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes only clarify previously available surveillance testing configurations and limitations on those configurations. These clarifications ensure maximum surveillance testing flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident. The changes do not modify any equipment, hardware or how the RTS and ESFAS functions respond to any accident condition.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not modify any equipment, hardware or functions. The switches are installed with fixed limit setpoints that actuate based on valve position. The switches are not subject to drift and are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the required TADOT. As a result, performing only the TADOT provides equivalent assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint in Function 16.b, ''Turbine Stop Valve Closure,'' is administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated. This was an oversight in the ITS review and conversion process. The proposed change does not modify any hardware or equipment, and only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, ''Turbine Impulse Chamber Pressure, P–13,'' is administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The P–13 intended (nominal) trip setpoint has always been maintained at 10 percent and remains unchanged. This change does not modify any equipment or hardware. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 will not create the possibility of a new or different kind of accident from any accident previously evaluated. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes in the required action statements in the LCOs for the allowable surveillance testing configurations for both the RTS and ESFAS instruments will not involve a significant reduction in a margin of safety. The proposed changes only clarify previously available surveillance testing configurations and limitations on those configurations. These clarifications ensure maximum surveillance testing flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident. The changes do not modify any equipment, hardware or how the RTS and ESFAS functions respond to any accident condition.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not involve a significant reduction in a margin of safety. This change does not modify any equipment, hardware or functions. The switches are installed with fixed limit setpoints that actuate based on valve position. The switches are not subject to drift and are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the required TADOT. As a result, performing only the TADOT provides equivalent assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint in Function 16.b, is administrative in nature and will not involve a significant reduction in a margin of safety. This was an oversight in the ITS review and conversion process. The proposed change does not modify any hardware or equipment, and only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, ''Turbine Impulse Chamber Pressure, P–13,'' is administrative in nature and will not involve a significant reduction in a margin of safety. The P–13 intended (nominal) trip setpoint has always been maintained at 10 percent and remains unchallenged. This change does not modify any equipment or hardware. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 does not involve a significant reduction in a margin of safety. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions.

None of the proposed changes affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendments request: December 9, 2002.

Description of amendments request: The proposed amendments would revise Technical Specification 3.7.5, ''Auxiliary Feedwater System,'' Surveillance Requirement (SR) 3.7.5.2 for San Onofre Nuclear Generating Station, Units 2 and 3. Specifically, the proposed change would change wording of the Frequency of SR 3.7.5.2 from ''31 days on a Staggered Test Basis'' to ''In accordance with the Inservice Testing Program.'' Such inservice tests confirm component operability, trend performance, and detect incipient failures by indicating abnormal performance. This change is requested to implement recommendations from the Standard Technical Specifications for Combustion Engineering Plants, NUREG–1432, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

In June 2001, the Nuclear Regulatory Commission (NRC) issued NUREG 1432, Revision 2, ''Standard Technical Specifications Combustion Engineering Plants.'' For Technical Specification 3.7.5, ''Auxiliary Feedwater (AFW) System,'' Surveillance Requirement (SR) 3.7.5.2 requires verification that each AFW pump's developed head at the flow test point is greater than or equal to the required developed head which ensures that AFW pump performance has not degraded during the cycle. This test confirms one point on the pump design curve and is indicative of overall performance. This proposed change will revise San Onofre Nuclear Generating Station (SONGS) Surveillance Frequency to be consistent with NUREG 1432, Revision 2. This change in and of itself will have no effect on the probability or consequences of an accident previously evaluated.

Once this change to the Technical Specification is approved, changes to the Surveillance Frequency of the AFW pumps would be controlled in accordance with the Risk-Informed Inservice Testing Program.

Therefore, the proposed change does not involve a significant increase in the probability of consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will not change the design, configuration or method of operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will change the SR 3.7.5.2 Frequency from ''31 days on a Staggered Test Basis'' to ''In accordance with the Inservice Testing Program.'' The proposed change does not change the operation or surveillance requirements. It does not change the design function of any of AFW system components. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above, Southern California Edison concludes that the proposed amendment present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 2, 2002.

Description of amendment request: The proposed amendments change Technical Specification Surveillance Requirement 3.6.4.1.2 to require that only one access door in each access opening of the secondary containment be verified closed every 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Does] the proposed change [* * *] involve a significant increase in the probability or consequences of an accident previously evaluated[?]

The proposed change to Surveillance Requirement SR 3.6.4.1.2 would require that only one of the two secondary containment access doors be verified closed; presently, both doors are required to be verified closed. This change is administrative in nature in that it does not involve, require, or result from any physical change to me secondary containment boundary or access door configuration. The change to Surveillance Requirement SR 3.6.4.1.2 is consistent with TSTF Standard Technical Specification Change Traveler TSTF–18, Revision 1, and Surveillance Requirement SR 3.6.4.1.3 of Revision 2 of Volume 1 of NUREG–1433. As indicated in the ''Justification'' portion of Standard Technical Specification Change Traveler TSTF–18, Revision 1, verifying one of the two access doors is closed is sufficient to ensure that the infiltration of outside air does not prevent the establishment and preservation of the required negative pressure within the secondary containment. Indeed, neither the requirements regarding minimum negative pressure and maximum infiltration and drawdown time nor the actions required to be taken should these requirements not be met will be altered by me proposed Licensing amendment.

Because the physical characteristics and performance requirements of the secondary containment will not be altered and the change to Surveillance Requirement SR 3.6.4.1.2 is consistent with the current revision of NUREG–1433, the proposed Licensing amendment can not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. [Does] the proposed change [* * *] create the possibility of a new or different kind of accident from any previously evaluated[?]

For the reasons previously discussed, neither the secondary containment boundary nor the access door configuration will be altered by or because of the proposed change to the surveillance requirement. Likewise, the requirements defining and governing secondary containment operability and functionality, that is, Standby Gas Treatment system flow rate and secondary containment negative pressure and drawdown limits, will not be changed. The secondary containment, including its access openings, will remain physically unaltered; will function as presently described in the Updated Final Safety Analysis Report [(UFSAR)]; and will be subject to the same structural and functional requirements. Under these circumstances, this change can not, and does not, create the possibility of a new or different kind of accident from any previously evaluated.

3. [Does] the proposed change [* * *] involve a significant decrease in the margin of safety[?]

The requirements defining and governing secondary containment operability and functionality, that is, Standby Gas Treatment system flow rate and secondary containment negative pressure and drawdown limits, will not be changed. The secondary containment, including its access openings will function as presently described in the [* * *] UFSAR and will be subject to the same structural and functional requirements. Therefore, this change can not, and does not, reduce any margin of safety associated with the secondary containment function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 4, 2002.

Brief description of amendments: The proposed amendments revise several of the Required Actions in the Technical Specifications (TS) that require suspension of operations involving positive reactivity additions or suspension of operations involving reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendments revise several Limiting Conditions for Operation (LCO) Notes that preclude reductions in RCS boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS [Reactor Trip System] instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes to the Required Actions and LCO Notes assure the limits on SDM [Shutdown Margin] and refueling boron concentration continue to be met, consistent with the analysis assumptions and initial conditions included within the safety analysis and licensing basis. The activities covered by this amendment application are routine operating evolutions. The proposed changes do not reduce the capability of reborating the RCS.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for an inadvertent boron dilution event, as discussed in FSAR Section 15.4.6, is a failure in the reactor makeup control system (RMCS) or operator error such that inventory makeup with the incorrect boron concentration enters the RCS by way of the CVCS [Chemical and Volume Control System]. Since the RMCS design is unchanged, there will be no initiating event frequency increase associated with equipment failures. However, there could be an increased exposure time per operating cycle to potential operator errors during TS Conditions that, heretofore, prohibited positive reactivity additions. As such, the RTS Instrumentation and RCS Loops TS Bases changes from TSTF [Technical Specification Task Force]-286, Revision 2, have been augmented to preclude the introduction of reactor makeup water into the RCS via the CVCS when one source range neutron flux channel is inoperable or when no RCS loop is in operation. The equipment and processes used to implement RCS boration or dilution evolutions are unchanged and the equipment and processes are commonly used throughout the applicable MODES under consideration. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. The proposed changes merely permit the conduct of normal operating evolutions when additional controls over core reactivity are imposed by the Technical Specifications. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on SDM and refueling boron concentration.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the limits on SDM or refueling boron concentration. The nominal trip setpoints specified in the Technical Specifications Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and

requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: September 16, 2002.

Brief description of amendment: The amendment revises a license condition by deleting the requirement to include check valve MVD–V5008 in the facility check valve program.

Date of issuance: December 13, 2002.

Effective date: December 13, 2002.

Amendment No.: 251.

Facility Operating License No. DPR–62: Amendment revises Appendix B, ''Additional Conditions.''

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68731).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 31, 2002, as supplemented on September 18, 2002.

Brief description of amendments: The amendments change the method of verifying boron concentration of each safety injection tank. Rather than taking a sample of each tank every 31 days, the revised technical specification surveillance requirement requires leakage into the tanks to be monitored every 12 hours and a sample to be taken every 6 months.

Date of issuance: December 19, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 255 and 232.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2002. The September 18, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 19, 2002.

No significant hazards consideration comments received: No.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 10, 2001, as supplemented by letters dated June 19 and November 8, 2002. The supplemental information provided clarification that did not change the scope or the initial no significant hazards consideration determination.

Brief description of amendment: The amendment revises TS 3/4.9.7 and the corresponding Bases to address the use of a single-failure-proof-handling system for the Spent Fuel Building and to remove the restriction on travel of crane loads in excess of 1800 pounds.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 198.

Facility Operating License No. DPR–61: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 29, 2002.

Brief description of amendments: The amendments revised the Technical Specifications 3.8.4.7, to modify the note to eliminate the ''once per 60 months'' restriction on replacing the battery service test by the battery modified performance discharge test. Associated changes to the TS Bases are also included.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 209 & 190.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68733).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 30, 2002, as supplemented on October 31, 2002.

Brief description of amendment: The amendment revised the requirements in several administrative programs in Technical Specification Section 6.0, ''Administrative Controls.'' Specifically, the amendment: (1) Replaced the specific management titles for several organizational positions with generic titles, (2) replaced the title of the Quality Assurance Program Description

with a reference to the quality assurance program described or referenced in the Updated Final Safety Analysis Report, and (3) deleted the functions of the Station Nuclear Safety and the Nuclear Facilities Safety Committees and the Vice President-Nuclear Power since their duties and responsibilities are described in the Quality Assurance Program Description.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 235.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42824).

The October 31 supplemental letter provided clarifying information that did not expand the scope of the amendment or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: June 28, 2002, as supplemented on October 15 (two separate letters), October 17, November 15, and December 6, 2002.

Brief description of amendment: The amendment increases the licensed reactor core power level by 1.66 percent from 3250 megawatts thermal (MWt) to 3304 MWt. The power level increase is considered a measurement uncertainty recapture power uprate.

Date of issuance: December 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 273.

Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48219).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The amendment revised Technical Specification 2.7, ''Electrical Systems,'' to increase the amount of diesel fuel oil required for seven days of emergency diesel generator operation.

Date of issuance: December 16, 2002.

Effective date: December 16, 2002, and to be implemented within 30 days of issuance.

Amendment No.: 213.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 24, 2002, as supplemented by letter dated September 24, 2002.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, ''Post Accident Sampling System (PASS),'' and thereby eliminate the requirements to have and maintain the PASS at Plant Hatch.

Date of issuance: December 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 235 & 177.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50958).

The supplement dated September 24, 2002, provided clarifying information that did not change the scope of the June 24, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 2002.

No significant hazards consideration comments received: No

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: October 24, 2001, as supplemented by correspondent e-mails dated August 27, 2002, and September 24, 2002.

Brief description of amendments: The amendments consist of relocating various Technical Specifications (TSs) to the Technical Specification Requirements Manual (TRM). The amendments will relocate TSs 3/4.1.3.3, 3/4.3.3.2, 3/4.3.3.11, 3/4.4.7, 3/4.4.9.2, 3/4.3.4.11, 3/4.7.2, 3/4.7.10, 3/4.9.3, 3/4.9.5, 3/4.9.7, 3/4.10.5, and 3/4.11.2.5 to the TRM. Their associated bases will also be relocated to the TRM to be consistent with relocation of the various TSs. In addition, the proposed amendment corrects various typographical and page numbering errors, deletes an outdated one-time exception, and makes minor formal changes to improve consistency.

Date of issuance: The license amendment is effective as of its date of issuance and shall be implemented within 6 months from the date of issuance.

Effective date: December 17, 2002.

Amendment Nos.: Unit 1—145; Unit 2—33.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5334).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 3, 2002.

Description of amendment request: The proposed amendment revised Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for

any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: December 23, 2002.

Effective date: Date of issuance, to be implemented within 45 days.

Amendment Nos.: 243, 278, 237.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2002.

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant , Unit 1, Rhea County, Tennessee

Date of application for amendments: September 3, 2002.

Description of amendment request: The proposed amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: December 11, 2002.

Effective date: Date of issuance, to be implemented within 45 days.

Amendment No.: 42.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63699).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket No. 50–280, Surry Power Station, Unit 1, Surry County, Virginia

Date of application for amendment: October 15, 2001, as supplemented November 8, 2001, June 28, 2002, and July 25, 2002 .

Brief Description of amendment: This amendment revises the Technical Specifications to allow a one-time change in the Appendix J Type A containment integrated leakage rate test interval from the required 10 years to a test interval of 15 years at Surry Power Station, Unit 1.

Date of issuance: December 16, 2002.

Effective date: December 16, 2002.

Amendment No.: 233.

Facility Operating License No. DPR–32: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64309). The November 8, 2001, June 28, 2002, and July 25, 2002, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of December 2002.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–156 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 23, 2003 Public Hearing

Time and Date: 1 p.m., Thursday, January 23, 2003.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing open to the public at 1 p.m.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, January 21, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, January 21, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: January 3, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–313 Filed 1–3–03; 11:17 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Rule 17a–7; SEC File No. 270–238; OMB Control No. 3235–0214.]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17a–7 [17 CFR 270.17a–7] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Exemption of

certain purchase or sale transactions between an investment company and certain affiliated persons thereof.'' It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies, which are affiliated persons or affiliated persons of affiliated persons of each other, or between a registered investment company and an affiliated person or an affiliated person of an affiliated person, when the affiliation arises solely because of a common adviser, director, or officer. Rule 17a–7 requires investment companies to keep various records in connection with purchase or sale transactions affected by the rule. The rule requires the board of directors of an investment company to establish procedures reasonably designed to ensure that all conditions of the rule have been satisfied. If an investment company enters into a purchase or sale transaction with an affiliated person, the rule requires the investment company to compile and maintain written records of the transaction.[1] In addition, under the rule, the board is required to determine, at least on a quarterly basis, that all affiliated transactions made during the preceding quarter were made in compliance with these established procedures. The Commission's examination staff uses these records to evaluate transactions between affiliated investment companies for compliance with the rule.

The Commission estimates that approximately 1,000 investment companies enter into transactions affected by rule 17a–7 each year and, therefore, are subject to the rule's information collection requirements.[2] The average annual burden for rule 17a–7 is estimated to be approximately two burden hours per respondent, for an annual total of 2,000 burden hours for all respondents.[3] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Rule 17a–7 requires investment companies to maintain and preserve permanently a written copy of the procedures governing rule 17a–7 transactions. In addition, investment companies are required to maintain written records of each rule 17a–7 transaction for a period of not less than six years from the end of the fiscal year in which the transaction occurred. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 27, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–271 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] These estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives. Based on these conversations, the Commission staff estimates that most investment companies (4,000 of the estimated 4,500 registered investment companies) have adopted procedures for compliance with rule 17a–7. Of these 4,000 investment companies, the Commission staff estimates that each year approximately 25% (1,000) enter into transactions affected by rule 17a–7.

[3] This estimate is based in turn on the staff's estimate that the approximately 1,000 funds that rely on rule 17a–7 annually engage in an average of 8 rule 17a–7 transactions and spend approximately 15 minutes per transaction on recordkeeping required by the rule.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (HSBC Bank plc, To Withdraw From Listing and Registration its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) From the New York Stock Exchange, Inc. File No. 1–87110

December 31, 2002.

HSBC Bank plc, a public limited company incorporated under the laws of England and Wales (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors (''Board'') of the Issuer approved a resolution on November 27, 2002 to withdraw the Issuer's Securities from listing on the NYSE. In making the decision to withdraw its Securities from the NYSE, the Issuer states the Securities are not widely held in the United States and the ongoing burdens associated with maintaining the listing are considered onerous and of little benefit to investors. The Issuer states that it intends to consolidate, as far as possible, the listings of all its Securities on a single stock exchange and be subject to the ongoing reporting requirements of that exchange. In addition, the Issuer states that all the terms and conditions of the Securities will remain unchanged. The Issuer states that its Securities began trading on the London Stock Exchange on December 20, 2002.

Any interested person may, on or before January 21, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–221 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47113; File No. SR-Amex-2002-89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 5, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 23, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader at the cross price. The text of the proposed rule is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 126(g)

Commentary

.02 When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 5,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may ''cross'' those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 151, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. *No specialist or Registered Trader may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this Commentary .02.* A transaction effected at the cross price in reliance on this Commentary .02 shall be printed as ''stopped stock''.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 126 (Precedence of Bids and Offers) sets out rules governing priority and precedence of bids and offers on the Exchange Floor, and generally provides that bids and offers are entitled to precedence based on time, with a member bidding at the highest price (offering at the lowest price) entitled to priority, and members simultaneously bidding at the highest price (offering at the lowest price) entitled to be on parity and divide executions at their price after a previous sale removes all bids and offers from the Floor. Commentary .02 to Amex Rule 126(g) applies only to agency (that is, both orders for accounts of non-members) crosses (referred to herein as ''clean crosses'') to buy and sell orders of 5,000 shares or more. This commentary provides that a member may cross those orders at a price at or within the prevailing quotation, with such orders entitled to priority at the cross price over previously entered bids and offers. When crossing these orders, the member must follow the crossing procedures of Amex Rule 151 and another member may trade with either the bid or offer side of the cross, but only to provide price improvement to all or part of the bid or offer. In addition, the member must trade with all other market interest having time priority at that price before trading with any part of the cross transaction.

The Exchange implemented Commentary .02 to facilitate execution of block size crosses on the Amex. In implementing this exception to the Exchange's rules of precedence, and, in reducing minimum share size required to permit a clean cross from 25,000 to 5,000 shares, the Exchange was responding competitively to regional exchanges that were attracting Amex orders because orders to cross are not readily broken up by other trading interest in those markets, which may lack a trading crowd or limit orders on specialists' books.[4]

A member currently is not permitted to break up a proposed clean agency cross at the cross price, but may trade with the bid or offer side to provide price improvement to all or part of the bid or offer. The Exchange proposes to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member or member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The proposed rule would still enable members representing agency orders to break up the cross to provide price improvement to all or part of the bid or offer. The purpose of the rule is to continue to reduce the amount of crossing activity lost to regional exchanges or the third market. Because clean crosses are required under Amex Rule 151 to be effected at the minimum price variation, since the advent of decimal pricing, it is possible for the

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures (''Amendment No. 1''). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

[4] *See* File No. SR–Amex–92–41, approved in Release No. 34–34089, May 26, 1994 and File No. SR–Amex–01–02, approved in Release No. 34–44123, March 28, 2001.

specialist or other members to interfere with a cross while providing price improvement of only $.01 to a portion of the cross. This may result in a perception that specialists or Registered Traders will break up a proposed clean cross transaction by trading for their own accounts at a minimally improved price ahead of a public customer on the other side of the cross. This perception could encourage a loss of crossing activity to other markets.

Amex clean cross procedures will continue to preserve auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Exchange believes the proposal will enhance competition among markets in the execution of agency crosses.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Act in general and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–89 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–269 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47106; File No. SR–NASD–2002–99]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Gross Income Assessments and Personnel Assessments

December 30, 2002.

I. Introduction

On July 24, 2002, the National Association of Securities Dealers, Inc. (''NASD''or ''Association'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its Member Regulation (including Enforcement) pricing structures to: (1) Implement a three-tiered flat rate for the Gross Income Assessment (''GIA'') that would be applied to gross FOCUS revenue and would eliminate existing deductions and exclusions; (2) use the Personnel Assessment as a more prominent assessable base to fund Member Regulation activities. On August 21, 2002, the NASD amended the proposal.[3] The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on August 30, 2002.[4]

The Commission received 13 comment letters on the proposed rule change.[5] On November 29, 2002, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 21, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division'') Commission, and attachments (''Amendment No. 1''). In Amendment No. 1, the NASD provided new proposed rule language that completely replaces and supersedes the original proposed rule language, and made minor technical amendments to the rest of the filing.

[4] *See* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893.

[5] August 19, 2002 letter from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. (''NYSE'') to Jonathan G. Katz, Secretary, Commission (''NYSE Letter''); September 17, 2002 letter from Lanny A. Schwartz, Philadelphia Stock Exchange, Inc. (''Phlx'') to Jonathan G. Katz, Secretary, Commission (''Phlx Letter''); September 18, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange (''CBOE'') to Jonathan G. Katz, Secretary, Commission (''CBOE Letter''); September 19, 2002 letter from Thomas W. Sexton, Vice President and General Counsel, National Futures Association

Continued

NASD filed a response to the comment letters and simultaneously amended the proposed rule change.[6] This order approves the proposed rule change as modified as Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

II. Summary of Comments

The Commission received 13 comment letters on the proposed rule change, all in opposition to the proposal.[7]

Many commenters objected to the proposal because they believe the proposed fees are not limited to recovery of costs for services performed by the NASD.[8] For example, commenters expressed disapproval of the NASD's proposed changes to the manner in which it calculates the GIA, stating the new method of calculating the GIA would include revenue from transactions for which there is no regulatory nexus between the transactions and the NASD, including transactions that do not involve securities.[9] Some commenters disapprove of the proposal because they believe the amount of the GIA will have an inverse relationship to the resources that the NASD must expend on firms. In other words, the new method of calculating the GIA allegedly would result in a greater financial impact on firms for which the NASD plays a smaller regulatory role.[10]

Commenters objected to the proposal because they believe the NASD will be charging its members who have dual memberships for regulatory services in relation to transactions in covered securities (as defined in the proposals) that are effected on other markets.[11] Additionally, the commenters expressed concern about the precedent the proposal will set. For example, if the NASD is allowed to assess a fee based on its member's futures business, the NFA may determine that it is acceptable to assess fees based on its members' securities business.[12]

In its response to the commenters, the NASD focused only on comments made in connection with the instant proposed rule change.[13] The NASD expressed its belief that the proposed changes to the GIA are fair and equitable, because they will ''ensure that all NASD members use the same simplified fee structure and will be assessed on the same uniform basis.'' [14]

With regard to the commenters' concerns that there is no clear nexus between the NASD's proposed fees and the NASD's regulatory services provided, the NASD explained that most of the commenters objected to including commodities in the GIA.[15] By reinstating the exclusion for commodities income, the NASD believes it has addressed the commenters' concerns in this regard. The NASD stated that it believes that the requirement that fees be reasonable and equitably allocated does not require a fee structure ''so specific and complex as to tie specific self-regulatory programs and related expenses to specific business lines within a firm[.]'' The NASD reiterated the position outlined in the proposal—that total revenues of a broker-dealer member, combined with trading activity of those members and the number of registered persons, serves as an effective measure of what drives the NASD's regulatory costs.[16] Regarding the concern that other markets may institute fees similar to the

(''NFA'') to Jonathan G. Katz, Secretary, Commission (''NFA Letter''); September 19, 2002 letter from Patrice Blanc, Chairman and Chief Executive Officer, Fimat USA, Inc. (''Fimat'') to Jonathan G. Katz, Secretary, Commission (''Fimat Letter''); September 20, 2002 letter from Catherine D. Dixon, Assistant Secretary of the Commission, U.S. Commodity Futures Trading Commission (''CFTC'') to Jonathan G. Katz, Secretary, Commission (''CFTC Letter''); September 26, 2002 letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association (''SIA'') to Jonathan G. Katz, Secretary, Commission (''SIA Letter''); September 20, 2002 letter from David J. Vitale, President and Chief Executive Officer, Board of Trade of the City of Chicago, Inc., James J. McNulty, President and Chief Executive Officer, Chicago Mercantile Exchange, Inc., and J. Robert Collins, President and Chief Executive Officer, New York Mercantile Exchange, Inc. to Jonathan G. Katz, Secretary, Commission (''Mercantile Letter''); September 23, 2002 letter from Christopher K. Hehmeyer, Co-Chairman, and Carl W. Gilmore, General Counsel, both of Goldenberg, Hehmeyer and Co. (''Goldenberg'') to Jonathan G. Katz, Secretary, Commission (''Goldenberg Letter'') September 20, 2002 letter from John M. Damgard, President, Futures Industry Association, Inc. (''FIA'') to Jonathan G. Katz, Secretary, Commission (''FIA Letter''); September 23, 2002 letter from Brad W. Corey, Chief Financial Officer, Man Financial Inc. (''Man'') to Jonathan G. Katz, Secretary, Commission (''Man Letter''); September 26, 2002 letter from Ronald H. Filler, Senior Vice President, Lehman Brothers, Inc. (''Lehman'') to Jonathan G. Katz, Secretary, Commission (''Lehman Letter''); September 20, 2002 letter from Thomas O'Brien, Chief Financial Officer, TransMarket Group, L.L.C. (''TransMarket'') to Jonathan G. Katz, Secretary, Commission (''TransMarket Letter'').

[2] November 27, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission (''NASD Response Letter'') and attachments (collectively, ''Amendment No. 2''). In Amendment No. 2, the NASD excluded commodities income from Gross Revenue for purposes of the GIA.

[7] *See* footnote 5, *supa.* The Commission notes that, in proposing to modify its regulatory pricing structure, the NASD filed the instant proposed rule change in tandem with SR–NASD–2002–98. *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002). SR–NASD–2002–98 was effective upon filing with the Commission. 15 U.S.C. 78s(b)(3)(A)(ii), 17 CFR 240.19b-4(f)(2). Because the NASD's proposed changes to its regulatory pricing structure were split between two separate yet related rule filings, some of the commenters expressed opposition to the restructuring, generally, without raising specific concerns about SR–NASD–2002–99. *See* NYSE Letter; Phlx Letter; and SIA Letter at 1–2 (absence of the effective rate of the NASD's proposed trading activity fee makes it impossible for SIA member firms to determine the impact of all elements of the NASD's proposed pricing structure). No commenters objected to the Personnel Assessment specifically. Some commenters questioned whether the NASD's proposed restructuring as a whole would be revenue neutral. *See e.g.,* NFA Letter at 1 (''NASD claims that its entire proposal would be revenue neutral, but it does not provide any figures to support that claim.'').

[8] *See e.g.,* NYSE Letter; CBOE Letter at 3; NFA Letter at 3–4; Fimat Letter at 1–2; Mercantile Letter at 1; Lehman Letter at 2; Man Letter at 2; TransMarket Letter; FIA Letter at 1 (the proposal '' * * * unfairly penalizes member firms that derive a significant portion of their revenue from activities unrelated to their securities business, which are not subject to the oversight of the NASD and with respect to which the NASD provides no regulatory services.'') and at 4–5.

[9] *See e.g.,* CFTC Letter at 1; NFA Letter at 1–2 (GIA will collect income via FOCUS reports that is unrelated to securities, such as over-the-counter derivatives, cash commodities, futures, and foreign exchange); Fimat Letter (GIA will have adverse and disproportionate impact on combined broker-dealers/futures commission merchants by allowing the NASD to collect fees on revenue that does not come from securities-related business); Mercantile Letter at 1, 3 (''* * * there is no nexus between the NASD fee and its regulatory responsibilities in the commodity industry.''); Goldenberg Letter at 1 (Goldenberg will experience significant increase in its GIA, though ''not a single customer * * * would be entitled to utilize any of the regulatory services of the NASD.''.

[10] *See* NFA Letter at 4–5; FIA Letter at 2–3; Man Letter at 3.

[11] *See* Phlx Letter at 1; Mercantile Letter at 1.

[12] Mercantile Letter at 4 (''NFA could also decide to impose fees on dually registered members with respect to their securities-related transactions * * * duplicative fees would be imposed at the expense of members' profit margin, or, alternatively, such fees would merely be passed on by the members to the ultimate customers.''). *See also* Fimat Letter at 2.

[13] NASD Response Letter at 2–3. The Commission notes that the NASD Response Letter speaks of 15 comment letters, because the NASD listed comment letters received on the instant filing and on SR–NASD–2002–98. There are only 13 letters specific to the instant filing, however, and the NASD will address comments relating to SR–NASD–2002–98 at a later time.

[14] *Id.* at 5. The NASD also noted that it removed deductions and exclusions that were used inconsistently by member firms from the GIA equation. *Id.* However, the NASD reinstated the exclusion for commodities income. Noting that some of its member firms conduct securities and commodities business in a single, jointly registered entity, while other members conduct a substantially similar business in separate entities with separate registrations, the NASD determined that ''to subject those conducting securities and commodities business in a single jointly registered entity to the increased expense burden (when the commodities income is already assessed under a comparable regulatory scheme) would result in similar entities receiving different treatment.'' *Id.*

[15] NASD Response Letter at 7.

[16] *Id.* at 8.

NASD's fees, the NASD restates its position that the fees it is proposing ''are directly related to the regulatory responsibilities of NASD, are member regulatory fees not market regulatory fees, and are revenue neutral to NASD.'' [17]

Finally, with regard to the concern that commenters are unable to comment meaningfully on the proposal because of the lack of specifics on the trading activity fee in SR–NASD–2002–98, the NASD states that it has since established and published the trading activity fee rates. Furthermore, the trading activity fee portion of the NASD's proposed fee restructuring proposal is now subject to full notice and comment.[18]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [19] and, in particular, the requirements of section 15A(b)(5) of the Act.[20] Section 15A(b)(5) requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission finds that the three-tiered flat rate for the GIA that the NASD proposes to apply to gross FOCUS revenue and the use of the Personnel Assessment, as described in the instant proposed rule change, is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to simplify the NASD's fee structure, and to fairly and equitably assess higher fees to those member firms that require a greater portion of NASD regulatory services.

The Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has made a good faith effort to do so in a manner that is fair and reasonable. The Commission also notes that the NASD has indicated it will examine the fees periodically, and will adjust the fees accordingly in an effort to keep the fees at a level that is revenue neutral to the NASD.

While some commenters believe there is no clear nexus between the NASD's proposed fees and the regulatory services the NASD provides, the Commission believes that the NASD had adequately addressed this concern. The Commission believes that both the overall business activity of a firm and the level of transactions a firm handles are reflected in the cost of the NASD's regulatory services. If the fee were based on either measure alone firms whose business is predominantly reflected in one or the other measure would subsidize the operations of other firms. Furthermore, the NASD, as a registered national securities association, has a wide-ranging responsibility for overseeing the just and equitable conduct of its members, as well as its members' financial condition, no matter what activities its members choose to conduct through the broker-dealer. The Commission is satisfied that the NASD's proposed GIA is reasonably tailored to apportion fees based on the regulatory services the NASD provides. Additionally, the Commission agrees that the NASD's decision to reinstate the exclusion for commodities income in the GIA should substantially satisfy the commenters who expressed dissatisfaction with this aspect of the proposal.

With regard to the commenters' concern that approval of the NASD's proposed fee restructuring may set a precedent whereby other markets may institute fees similar to the NASD's fees, the Commission notes that any fee proposal filed with the Commission must meet the statutory standard established in section 15A(b))5) of the Act.[21] In particular, the Commission will, as it has done in the instant proposed rule change, assess any such proposal to determine whether or not the proposed fees have a sufficient nexus to the regulatory responsibilities of the proposing entity, and are fees based on the regulation of members as opposed to the regulation of markets.

The Commission believes that the NASD has been responsive to the commenters' concerns that more time and information is necessary to evaluate the NASD's tandem proposed rule changes to restructure its regulatory fees. With the filing of SR–NASD–2002–147 and SR–NASD–2002–148, the NASD has provided the public with further opportunity to evaluate its proposed regulatory fee restructuring.

With regard to all other issues raised by the commenters, the Commission is satisfied that the NASD has adequately and accurately addressed the commenters' concerns.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment No. 2 in response to comments it received after the publication of the notice of filing of the proposed rule change, to address certain commenters' concerns.[22] Because Amendment No. 2 is responsive to these commenters' concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–99 and should be submitted by January 28, 2003.

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002) (SR–NASD–2002–148).

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78o–3(b)(5).

[21] Exchange rules must comply with section 6(b)(4) of the Act. 15 U.S.C. 78f(b)(4).

[22] Certain commenters objected to the NASD's method of calculating the GIA because it would include revenue from transactions for which there is no regulatory nexus between the transactions and the NASD. See footnote 9, *supra*. Although the NASD believes that the GIA structure as proposed constitutes ''a reasonable fee that is equitably allocated, and consistent with the Act,'' the NASD reinstated the exclusion for commodities. NASD Response Letter at 5. According to the NASD, some of its member firms conduct securities and commodities business in a single jointly registered entity, and other members conduct a substantially similar business as separate entities with separate registrations. Reinstating the exclusion for commodities income allows similarly situated entities to receive the same treatment. While the NASD believes that commodities income drives some of the NASD's regulatory costs for jointly registered firms, it reinstated the exclusion for commodities income. *Id.*

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [23] that the proposed rule change (SR–NASD–2002–99), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–220 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47111; File No. SR–NASD–2002–183]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Amending Nasdaq's Rules Pertaining to Certain Issuer Entry Fees

December 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 30, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On December 31, 2002 Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend its rules regarding non-refundable application fees, listing fees for rights, and SmallCap entry and annual listing fees. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

(1) [When a] *A* domestic issuer, or foreign issuer raising capital in conjunction with its Nasdaq listing, *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series*) in The Nasdaq National Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.*

Up to 30 million shares—$100,000.

30+ to 50 million shares—$125,000.

Over 50 million shares—$150,000.

(2) [When a] *A* foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series*) in The Nasdaq National Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.*

Up to 3 million shares—$50,000.

3+ to 5 million shares—$75,000.

5+ to 30 million shares—$100,000.

30+ to 50 million shares—$125,000.

Over 50 million shares—$150,000.

(3) No change

(4) *An issuer that submits an application for inclusion of any class of rights in The Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of $1,000 to The Nasdaq Stock Market, Inc.*

([4]*5*) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

([5]*6*) If the application is withdrawn or is not approved, the entry fee (less the non-refundable *application* [processing] fee) shall be refunded.

(b)–(d) No change

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1) [When a]*An* issuer *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series)* [, other than convertible debentures,] in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq SmallCap Market, except for a non-refundable, application fee of $5,000, which must be submitted with the issuer's application.*

Up to [1 million shares—$9,500.

1+ to] 5 million shares—$[19,000] *25,000.*

5+ to 10 million shares—$[30,875] *35,000.*

10+ to 15 million shares—$[40,375] *45,000.*

Over 15 million shares—$[47,500] *50,000.*

(2) [When a]*An* issuer *that* submits an application for inclusion of any class of convertible debentures in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a [one-time, company] *non-refundable application* [listing] fee of $5,000 [(which shall include a $1,000 non-refundable processing fee)] and a fee of $1,000 or $50 per million dollars face amount of debentures outstanding, whichever is higher.

(3) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(4) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq requests that the Commission finds good cause to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 30, 2002 (''Amendment No. 2''). Amendment No. 2 makes technical changes to the proposed rule text.

filed with the issuer's appropriate regulatory authority.

(5) A*n issuer that submits an application for inclusion of any class of rights in The Nasdaq SmallCap Market, shall pay, at the time of its application, a non-refundable application fee to The Nasdaq Stock Market of $1,000.* [If the application is withdrawn or is not approved, the entry fee (less the non-refundable *application* [processing] fee) shall be refunded.]

(b) No change

(c) Annual Fee

(1) The issuer of a class of securities that is a domestic or foreign issue, including American Depositary Receipts (ADRs), listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. an annual fee to be computed as follows:

(A) $[8,000] *15,000 for the first issue if it has total shares outstanding of up to 10 million shares; or*

(B) *$16,000 for the first issue if it has total shares outstanding of 10 million or more shares;* plus

(C) $2,000 for each additional issue.

(D) *For companies with more than one issue, the first issue is the company's common stock or common stock equivalent with the highest total shares outstanding. For companies with no common stock or common stock equivalent, the first issue is the issue with the highest total shares outstanding.*

(2)–(4) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Nasdaq rules regarding non-refundable application fees, listing fees for rights, and SmallCap entry and annual listing fees. Nasdaq proposes that these changes be effective as of January 1, 2003. Nasdaq also proposes that the proposed fees be applied to all issuers listed as of that date, and all new listings entering Nasdaq on or after that date. Pursuant to NASD Rule 4520 (''The Nasdaq SmallCap Market''), SmallCap entry fees would increase from a range of $9,500 to $47,000, to a range of $25,000 to $50,000, depending on the total shares outstanding in the issue. Nasdaq SmallCap annual fees would increase from $8,000 for the first issue, to a range from $15,000 to $16,000, depending on the total shares outstanding in the issue. Nasdaq is undertaking this increase to cover costs associated with the operation of the SmallCap market. In particular, Nasdaq has continued to invest in market services and initiatives such as the launch of SuperMontage$_{SM}$, the NASDAQ Market Intelligence Desk$_{SM}$, and enhancements to NASDAQ.com. At the same time, Nasdaq's costs to provide regulatory oversight, client coverage and other professional services have continued to increase.

Nasdaq also proposes to: (1) Provide transparency to the entry fee for rights; (2) change the date of the assessment of entry fees from the date of application to the date of listing; and (3) increase the non-refundable portion of the listing fee from $1,000 to $5,000 for both the Nasdaq National Market and the Nasdaq SmallCap Market.[5]

With respect to the entry fee for rights, Nasdaq rules do not currently distinguish between rights and regular equities. As such, applications for the inclusion of any class of rights are subject to the same entry fees as those for regular equities. Nasdaq has traditionally waived all but $1,000 of the entry fees for rights because Nasdaq believes that it would be inequitable to charge the same entry fees for rights and regular equities, as rights are short-term in nature and usually expire in 30 to 60 days. Therefore, Nasdaq is proposing to codify a separate non-refundable entry fee of $1,000 for the inclusion of any class of rights to provide transparency to this policy.

Nasdaq is also proposing to revise the assessment date for entry fees from the date that an issuer submits a listing application to the date that an issuer is listed. Currently, Nasdaq currently assesses entry fees based on the date that an issuer submits its application. Because an issuer is billed for entry fees at the time that it is listed, however, Nasdaq staff must review the fee schedule that was in effect at the time that the issuer submitted its listing application in order to determine the appropriate entry fees that are due. Nasdaq believes that revising the assessment date for entry fees to the date that an issuer is listed will make it much easier for Nasdaq staff, as well as issuers, to determine the proper fees for the listing of a class of securities; as the fees will be determined by the fee schedule in effect at the time of billing.

Lastly, Nasdaq proposes to increase the non-refundable portion of the listing fee from $1,000 to $5,000. Currently, when an issuer submits an application for inclusion on Nasdaq, it must pay a one-time fee of $5,000, which includes a $1,000 non-refundable processing fee. Nasdaq is proposing to increase the non-refundable processing fee from $1,000 to $5,000 in order to cover the costs associated with processing an application. Because the cost of processing a listing application is approximately $5,000, Nasdaq is unable to cover its costs in those situations where an issuer withdraws its application or is denied listing. In conjunction with this change, Nasdaq also proposes to change the term ''listing fee'' to ''application fee.''

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act[6] in general, and with sections 15A(b)(5)[7] and 15A(b)(6)[8] of the Act in particular. Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq believes that the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices as well as to protect investors and the public interest by providing greater transparency to Nasdaq's rules for issuers, their counsel, and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See* NASD Rules 4510 and 4520, respectively.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–183 and should be submitted by January 28, 2003.

IV. Commission's Finding and Order Granting Accelerated Approval of a Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act [9] and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,[10] in that the proposal provides for an equitable allocation of reasonable dues, fees, and other charges among issuers using Nasdaq's facility and/or systems. As represented by Nasdaq, the Commission notes that the proposed fee increase in Nasdaq SmallCap entry and annual fees reflect the additional costs associated with operating Nasdaq SmallCap market, including various regulatory and client services provided to issuers. Namely, Nasdaq represented that it has continued to invest in market services and market quality improvements such as SuperMontage, the Nasdaq Market Intelligence Desk, and enhancements to NASDAQ.com. Furthermore, as represented by Nasdaq, the increase of a non-refundable application fee from $1,000 to $5,000 covers the processing of an issuer application for entry, especially in those instances where an issuer has withdrawn its application or has been denied listing.

The Commission also finds that the proposed rule change consistent with section 15A(b)(6) of the Act [11] because the proposed rules promote just and equitable principles of trade, and protect investors and the public interest. In particular, the Commission notes that Nasdaq should provide greater transparency to issuers by codifying its regular practice of charging a $1,000 fee for the inclusion of any class of rights. Finally, Nasdaq has represented that it would assess appropriate entry fees based on the fee schedule in effect at the time of listing, rather than the application date.

Nasdaq seeks to implement that proposed fees on January 1, 2003. In order to facilitate the implementation of the new fee schedule and ease administration of the fees, Nasdaq has requested that the Commission find good cause to approve the proposed rule change, as amended, before the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that granting accelerated approval to the amended proposal will allow Nasdaq to implement the new fees by January 1, 2003 and will provide issuers with notice and an opportunity to budget for additional costs.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the propsed rule change (SR–NASD–2002–183) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–222 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47112; File No. SR–NASD–2002–182]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending Existing Pilot Program for the Regulatory Fee and Trading Activity Fee

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the pilot program for the Trading Activity Fee (''TAF'') through March 1, 2003. The TAF structure as originally proposed in SR–NASD–2002–98 [5] (and modified in SR–NASD–2002–147 [6]) is set to expire on December 31, 2002. Upon expiration of SR–NASD–2002–98, the member regulatory pricing structure was to revert to Section 8 of Schedule A of the By-Laws as amended. However, the NASD has determined not to revert to the previous pricing structure, but rather to extend the TAF pilot program, to maintain the status quo and to allow the Commission more time to review issues presented by the TAF proposed rule change.[7] The NASD proposes no substantive changes to the existing pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] Securities Exchange Act Release No. 46818 (November 12, 2002), 67 FR 69782 (November 19, 2002).

[7] In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF structure that was effective on October 1, 2002.

program, other than to extend its operation through March 1, 2003.

The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98, which proposed a new member regulatory pricing structure.[8] The proposed rule change was filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. SR–NASD–2002–98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002.[11] On October 18, 2002, the NASD established a sunset provision whereby the TAF would cease to exist after December 31, 2002.[12] Upon expiration of SR–NASD–2002–98, the member regulatory pricing was to revert to Section 8 of Schedule A of the By-Laws as amended.

The NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the Commission more time to review issues presented by the TAF proposed rule change. Accordingly, the NASD filed the instant proposed rule change to extend the TAF structure pilot program through March 1, 2003. The NASD proposes no other changes to the pilot, other than to extend its operation through March 1, 2003.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[13] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on this proposed rule change were neither solicited nor received. Written comments have been solicited on SR–NASD–2002–98, SR–NASD–2002–147 and SR–NASD–2002–148. These comments are not addressed herein, but are, as appropriate, discussed in connection with the respective rule filings.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, acceleration of the operative date will allow the pilot to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–182 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–268 Filed 1–6–03; 8:45 am]

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[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002)(SR–NASD–2002–98). *See also* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002)(SR–NASD–2002–99). The NASD also published two *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notice to Members 02–41* (July 2002), and *Notice to Members 02–63* (September 2002).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] Member firms must pay the TAF (for the first quarter starting October 1, 2002) by no later than January 15, 2003.

[12] At the same time, the NASD filed a new proposed rule change (SR–NASD–2002–148), substantially similar to SR–NASD–2002–98 but filed under Section 19(b)(1) of the Act, to allow for additional notice and comment. The NASD sought Commission approval of SR–NASD–2002–148 with an implementation date of December 31, 2002. To date, this proposed rule filing is pending with the Commission.

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47110; File No. SR–NYSE–2002–49; SR–NASD–2002–154]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Exchange Rules 344 (''Supervisory Analysts''), 345A (''Continuing Education for Registered Persons''), 351 (''Reporting Requirements'') and 472 (''Communications With the Public'') and by the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange''), and on October 25, 2002, National Association of Securities Dealers (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On December 4, 2002, NYSE submitted Amendment No. 1 to its proposed rule change.[3] On December 18, 2002, NASD submitted Amendment No. 1 to its proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NYSE filed with the Commission proposed amendments to Rule 472 (''Communications with the Public''). The proposed amendments expand upon recently approved amendments to Rule 472 [5] and will place further restrictions on associated persons' (hereinafter referred to as research analysts) preparing research reports, compensation and trading activities, as well as additional disclosure requirements on research reports issued by members and member organizations.

Proposed amendments to Rule 351 (''Reporting Requirements''), will require members and member organizations to document the basis and approval of a research analyst's compensation as required by Rule 472(h)(2) and include it in the annual written attestation that they are required to submit to the Exchange.

Proposed amendments to Rule 344 (''Supervisory Analysts''), will require a new registration category and qualification examination for research analysts. Proposed amendments to Rule 345A (''Continuing Education for Registered Persons''), will include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules, regulations, ethics and professional responsibility.

NASD filed with the Commission proposed amendments to NASD Rules 1120 and 2711, and a proposed rule change to create a new NASD Rule 1050, to expand upon recently approved rules that govern research analyst conflicts of interest.

Below is the text of the proposed rule changes. Proposed new language is in *italics*; proposed deletions are in [brackets].

A. NYSE's Proposed Rule Text

Rule 472 Communications With the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public must be approved in advance by a member, allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) Research reports must be [prepared or] approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it must be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and

(ii) Any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.

(3) A member or member organization may not submit a research report to the subject company prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla Stuckey, Corporate Secretary, New York Stock Exchange, Inc., to James A. Brigagliano, Assistant Director, Division of Market Regulation (''Division''), Commission (December 4, 2002) (''NYSE Amendment No. 1''). NYSE Amendment No. 1 conformed aspects of the proposed NYSE rules to those of NASD (*See* SR–NASD–2002–154), and proposed effective dates for the various rule provisions.

[4] *See* Letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (December 18, 2002) (''NASD Amendment No. 1''). NASD Amendment No. 1 inserted language in proposed Rule 1050 to clarify that only research analysts who are directly responsible for the preparation of research reports (as opposed to indirect supervisors or others who are not directly responsible) would be required to register with NASD and pass a qualification examination. NASD Amendment No. 1 also conformed NASD's proposed research analyst compensation provisions to comparable provisions in the NYSE's research analyst rule amendments. NASD Amendment No. 1 also amended the definition of ''research report'' to conform it to the requirements of the Sarbanes-Oxley Act of 2002. NASD Amendment No. 1 also revised certain language that was contained in the discussion of the proposed amendment concerning print media interviews and articles.

[5] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

(4) No associated person may issue a research report or make a public appearance concerning a subject company if the associated person engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member or member organization designating the member or member organization as an underwriter of an initial public offering by the subject company. This provision shall not apply to any due diligence communication between the associated person and the subject company, the sole purpose of which was to analyze the financial condition and business operations of the subject company.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) *and Rule 472(h)(2)* for attestations to the Exchange regarding compliance).

Retention of Communications

(d) Communications with the public prepared or issued by a member or member organization must be retained in accordance with Rule 440 (''Books and Records''). The names of the persons who prepared and who reviewed and approved the material must be ascertainable from the retained records and the records retained must be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (*e.g.*, so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (*i.e.*, sell securities while maintaining a ''buy'' or ''hold'' recommendation, buy securities while maintaining a ''sell'' recommendation, or effecting a ''short sale'' in a security while maintaining a ''buy'' or ''hold'' recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) A member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) Sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) Sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) Transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer;

(vi) Transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports *and Participation in Public Appearances*

(f)(1) A member or member organization may not issue research reports regarding an issuer *or recommend an issuer's securities in a public appearance,* for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer *or recommend an issuer's securities in a public appearance,* for

which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering. This prohibition shall not apply to research reports issued under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the *member's or member's organization's* Legal or Compliance Department.

(4) No member or member organization which has acted as a manager or co-manager of a securities offering may issue a research report or make a public appearance within fifteen (15) days prior to or after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member or member organization has entered into with a subject company and its shareholders that restricts or prohibits the sale of the subject company's or its shareholder's securities after the completion of a securities offering. A member or member organization may permit exceptions to the prohibitions in paragraph (f)(4) (consistent with other securities laws and rules) for research reports that are issued as a result of the development of significant news or events, provided that such research reports are pre-approved in writing by the member's or member organization's Legal or Compliance Department.

(5) If a member or member organization withdraws its research coverage of a subject company, notice of this withdrawal must be made. Such notice must be made in the same manner as when research coverage was first initiated by the member or member organization and must include the member's or member organization's final recommendation or rating.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h)(*1*) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such *member's or member organization's* [person's] overall performance, including [services provided to] the *performance of the* Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(2) *An associated person's compensation must be reviewed and approved at least annually by a committee which reports to the Board of Directors or where the member or member organization has no Board of Directors to a senior executive officer of the member or member organization. Such committee may not include representatives from the member's or member organization's Investment Banking Department. The committee must, among other things, consider the following factors, if applicable, when reviewing an associated person's compensation:*

i. *The associated person's individual performance,* (e.g., *productivity, and quality of research product);*

ii. *The correlation between the associated person's recommendations and stock price performance;*

iii. *The overall ratings received from clients, sales force, and peers independent of the Investment Banking Department, and other independent rating services.*

The committee may not consider as a factor in determining the associated person's compensation, his or her contributions to the member's or member organization's investment banking business.

The committee must document the basis upon which each associated person's compensation was established. The annual attestation required by Rule 351(f) must certify that the committee reviewed and approved each associated person's compensation and has documented the basis upon which such compensation was established.

General Standards for All Communications

(Formerly positioned at Supplementary Material .30)

(i) No change

Specific Standards for Communications

(Formerly positioned at Supplementary Material .40)

(j) No change (except for deletion of .40(2)).

Disclosure

(k)(1)Disclosures Required in Research Reports and Public Appearances

Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) A member or member organization must disclose in research reports and an associated person must disclose in public appearances:

a. If, as of the last day of the month before the publication or appearance (or the end of the second most recent month if the publication or appearance is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,

b. If the associated person or a household member has a financial interest in the securities of the subject company, *and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position,* or

c. Any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.

Member, Member Organization and Affiliate Compensation

(ii) A member or member organization must disclose in research reports if the member or member organization or its affiliates: a) Has managed or co-managed a public offering of equity securities for the subject company in the past twelve (12) months; b) has received compensation for investment banking services from the subject company in the past twelve (12) months; or c) expects to receive or intends to seek compensation for investment banking

services from the subject company in the next three (3) months.

When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates; when the associated person knows or has reason to know of this relationship.

Disclosure of Associated Person's Affiliations With Subject Company

(iii) A member or member organization must disclose in research reports, and an associated person must disclose in public appearances, whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.

(k)(2) Disclosures Specific to Research Reports

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent.

A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues.

A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(i) The valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) The meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a ''strong buy'' rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a ''hold'' rating should not mean or imply that an investor should sell a security.

(iv) The percentage of all securities that the member or member organization recommends an investor ''buy,'' ''hold,'' or ''sell.'' Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.).

(v) A chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

When a member or member organization distributes a research report covering six (6) or more subject companies for purposes of the disclosures required in paragraph (k) of this Rule, such research report may direct the reader in a clear and prominent manner as to where they may obtain applicable current disclosures in written or electronic format.

Other Communications Activities

(l) Other communications activities are deemed to include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles or making radio/TV appearances.

Members and member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in paragraph (i). In addition, any activity which includes discussion of specific securities and/or industries is subject to the specific standards in paragraph (j) and the disclosure requirements of paragraphs (k)(1) and (k)(2)(i).

.10 Definitions

(1) Communication—The term ''Communication'' is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—''Research report'' is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision. [and includes a recommendation].

For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), research report includes, but is not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.

(3) Advertisement—''Advertisement'' is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.

(4) Market letters—''Market letters'' are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles *that are not defined as research reports.* They also *may* include ''follow-ups'' to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals.

(5) Sales literature—''Sales literature'' is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.

.20 For purposes of this Rule, ''investment banking services'' includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term ''Investment Banking Department'' means any department or division of the member or member organization, whether or not identified as such, that performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term ''associated person'' includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with, the *preparation* of [making of the recommendation to purchase, sell or hold an equity security in] research reports, or *making recommendations or offering opinions* in public appearances or establish*ing* a rating or price target of a subject company's equity securities. For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)b., (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940.

This term ''associated person'' also includes such ''other persons,'' e.g., Director of Research, Supervisory Analyst, or member of a committee, who have direct influence and/or control with respect to (1) preparing research reports, or (2) establishing or changing a rating or price target of a subject company's equity securities. Such other persons are subject to the provisions of paragraph (e)(1)—(4) of this Rule.

.50 For purposes of this Rule, the term ''public appearance'' includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio, [or] television *or print media* interview, or other public appearance or public speaking activity, *or the writing of a newspaper article or other type of public written medium* in which an associated person makes a recommendation or offers an opinion concerning any equity securities *and/or industries.*

.60 For purposes of this Rule, ''subject company'' is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a ''buy'' rating to 58% of the securities that it follows, a ''hold'' rating to 15%, and a ''sell'' rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a ''buy'' rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a ''buy'' rating are its investment banking clients. Such disclosure must be made for the ''buy,'' ''hold'' and ''sell'' ratings categories as appropriate.

.80 For purposes of this Rule, the term ''Legal or Compliance Department'' also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term ''initial public offering'' refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Reporting Requirements

Rule 351

(a)–(e) No change.

(f) Each member and member organization that prepares, issues or distributes [communications to the public, (including but not limited to,] research reports *and whose associated persons make public appearances* [, media presentations and interviews]), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472. *The attestation must also specifically certify that each associated person's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2) and that the basis for such approval has been documented.*

* * * * *

.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term ''research report'' is defined in Rule 472.10 *and the term ''public appearance'' is defined in Rule 472.50.*

Securities Analysts and Supervisory Analysts

Rule 344. *Securities analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.*

[Supervisory analysts required under Rule 472 shall be acceptable to, and approved by, the Exchange.]

.10 For purposes of this Rule, the term ''securities analyst'' includes a member, allied member or employee who is directly responsible for the preparation of research reports. Securities analyst candidates must pass a qualification examination acceptable to the Exchange.

.11 [.10] *For purposes of this rule, the term ''supervisory analyst'' includes a member, allied member or employee who is responsible for approving research reports under Rule 472(a)(2).* In order to show evidence of acceptability to the Exchange as a supervisory analyst, a member, allied member or employee may do one of the following:

(1) Present evidence of appropriate experience and pass an Exchange Supervisory Analysts Examination.

(2) Present evidence of appropriate experience and successful completion of a specified level of the Chartered Financial Analysts Examination prescribed by the Exchange and pass only that portion of the Exchange Supervisory Analysts Examination dealing with Exchange rules on research standards and related matters.

[In addition, if not a member, allied member or registered representative, the candidate is subject to Exchange investigation of character and conduct and should submit personal information on Form U–4 for this purpose.]

The Exchange publishes a Study Outline for the *Securities Analyst Examination and the Supervisory*

Analysts Examination. [Examinations are requested and given under the procedures described in Para. of 2345.15 for registered representative examinations.]

Continuing Education for Registered Persons

Rule 345A.(a) Regulatory Element—No change.

(b) Firm Element

(1) Persons Subject to the Firm Element—The requirements of Section (b) of this Rule shall apply to any registered person who has direct contact with customers in the conduct of the member's or member organization's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons*, and to registered persons who function as supervisory analysts, and securities analysts as defined in Rule 344* (collectively, ''covered registered persons'').

(2) Standards—No Change.

(3) Participation in the Firm Element—No Change.

(4) Specific Training Requirements—The Exchange may require a member or member organization, either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas the Exchange deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

.10 For purposes of this Rule, the term ''registered person'' means any member, allied member, registered representative or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers. *For purposes of the Regulatory Element required under Rule 345A(a), the term does not include persons registered as securities analysts or supervisory analysts pursuant to Rule 344.*

.20–.40 No Change.

.50 Pursuant to Rule 345A(b)(1), all persons registered as securities analysts and supervisory analysts pursuant to Rule 344 must participate in a Firm Element Continuing Education program that includes training in applicable rules and regulations, ethics and professional responsibility.

* * * * *

The Exchange is requesting the following implementation schedule for the proposed amendments (all time periods are from the date that the Commission approves the filing) in order to provide reasonable time periods for members and member organizations to develop and implement policies, procedures and systems to comply with the new requirements:

- NYSE Rule 345A(b) and .50—Implementation of a Firm Element Continuing Education Program for Research Analysts—90 calendar days.
- All other provisions—60 calendar days.

In addition, the Exchange is proposing an effective date of 180 days after approval of the amendments to NYSE Rule 344.10 to provide sufficient time for the Exchange to develop and implement a qualification examination for research analysts.

B. *NASD's Proposed Rule Text*

Rule 1050. Registration of Research Analysts

All persons associated with a member who are to function as research analysts shall be registered with NASD. Before their registrations can become effective, they shall pass a Qualification Examination for Research Analysts as specified by the Board of Governors. For the purposes of this Rule 1050, ''research analyst'' shall mean an associated person who is directly responsible for the preparation of research reports.

* * * * *

Rule 1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1)–(4) (No change.)

(5) Definition of Registered Person

For purposes of this Rule, the term ''registered person'' means any person registered with [the Association] *NASD* as a representative, principal, [or] assistant representative *or research analyst* pursuant to Rule 1020, 1030, 1040, *1050* and 1110 Series.

(6) (No change.)

(b) Firm Element

(1) Persons Subject to the Firm Element

The requirements of this subparagraph shall apply to any person registered with the member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons, *and to any person registered as a research analyst pursuant to Rule 1050* (collectively, ''covered registered persons''). ''Customer'' shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

(2) Standards for the Firm Element

(A) (No change.)

(B) Minimum Standards for Training Programs—Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; [and]

(iii) Applicable regulatory requirements[.]*; and*

(iv) With respect to registered research analysts, training in ethics, professional responsibility and the requirements of Rule 2711.

(3)–(4) (No change.)

* * * * *

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1)–(3) (No change.)

(4) ''Public appearance'' means any participation in a seminar, forum (including an interactive electronic forum), radio, [or] television *or print media* interview, or other public speaking activity, *or the writing of a print media article*, in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) ''Research analyst'' means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ''research analyst.'' *Solely for purposes of paragraph (g), the term ''research analyst'' also includes such other persons as the director of research, supervisory analyst, or*

member of a committee who have direct influence or control with respect to (A) the preparation of research reports, or (B) establishing or changing a rating or price target of a subject company's equity securities.

(6)–(7) (No change.)

(8) ''Research report'' means a written or electronic communication which includes an analysis of equity securities or individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision [and includes a recommendation].

(9) (No change.)

(b) (No change.)

(c) Restrictions on Review of a Research Report by the Subject Company

(1)–(3) (No change.)

(4) No research analyst may issue a research report or make a public appearance concerning a subject company if the research analyst engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member designating the member as an underwriter of an initial public offering by the subject company. This provision shall not apply to any due diligence communication between the research analyst and the subject company, the sole purpose of which was to analyze the financial condition and business operations of the subject company.

(d) [Prohibition of Certain Forms of] *Restrictions on* Research Analyst Compensation

(1) No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(2) A research analyst's compensation must be reviewed and approved at least annually by a committee that reports to the member's board of directors, or when the member has no board of directors, to a senior executive officer of the member. This committee may not have representation from the member's investment banking department. The committee must consider the following factors when reviewing a research analyst's compensation, if applicable:

(A) *the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;*

(B) *the correlation between the research analyst's recommendations and the stock price performance; and*

(C) *the overall ratings received from clients, sales force, and peers independent of the member's investment banking department, and other independent ratings services.*

The committee may not consider as a factor in determining the research analyst's compensation his or her contributions to the member's investment banking business. The committee must document the basis upon which each research analyst's compensation was established. The annual attestation required by Rule 2711(i) must certify that the committee reviewed and approved each research analyst's compensation and documented the basis upon which this compensation was established.

(e) (No change.)

(f) [Imposition of Quiet Periods] *Restrictions on Publishing Research Reports and Public Appearances; Termination of Coverage*

(1) No member may publish a research report regarding a subject company *or recommend a subject company's securities in a public appearance* for which the member acted as manager or co-manager of:

[(1)]*(A)* an initial public offering, for 40 calendar days following the date of the offering; or

[(2)]*(B)* a secondary offering, for 10 calendar days following the date of the offering; provided that:

[(A)]*(i)* paragraphs (f)(1)*(A)* and (f)[(2)]*(1)(B)* will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued; and

[(B)]*(ii)* paragraph (f)[(2)]*(1)(B)* will not prevent a member from publishing a research report pursuant to SEC Rule 139 regarding a subject company with ''actively-traded securities,'' as defined in Regulation M, 17 CFR 242.101(c)(1).

(3) No member that has acted as a manager or co-manager of a securities offering may publish a research report or make a public appearance concerning a subject company 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering. This paragraph will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such period, provided that the legal and compliance department authorized publication of that research report before it is issued.

(4) If a member intends to discontinue its research coverage of a subject company, notice of this withdrawal must be made in the same manner as when research coverage was first initiated by the member and must include the member's final recommendation or rating.

(g)–(i) (No change.)

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the NYSE and NASD included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NYSE and NASD have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Background

NYSE believes that allegations regarding improprieties in solicitation of investment banking business impugn the objectivity and integrity of research analysts and the reports they prepare and have continued to undermine investor confidence in the equity markets. According to the NYSE, in discharging their duties as SROs, the NYSE and NASD have been proactive in this regard and have passed sweeping changes, described below, to their rules governing research analysts, their member organizations and their communications with the public. The proposed amendments described below are a continuation of this process to restore integrity to the public equity markets.

Prior Amendments

On May 10, 2002, the SEC approved amendments to Exchange Rules 472 and 351 which significantly changed the manner in which members and member organizations, their investment-banking departments and their research analysts manage and disclose conflicts of interest between their investment banking and research activities. The SEC also

simultaneously approved comparable changes to NASD rules (new NASD Rule 2711—''Research Analysts and Research Reports''). NYSE believes that these rule amendments are the result of the SROs working to develop uniform industry rules.

The rule amendments generally restrict the relationship between research and investment banking departments and the companies that are the subject of research reports; require disclosure of a financial interest in a subject company by an analyst or a member or member organization; require disclosure of existing and potential investment banking relationships with a subject company; impose quiet periods for the issuance of research reports following the completion of a company's securities offering; restrict personal trading by research analysts in the stock of the companies covered by such analysts; and generally require extensive disclosure in research reports of certain important information to help customers monitor the correlation between an analyst's rating and the stock's price movements.

The rule amendments have been phased-in incrementally to provide members and member organizations time to develop and implement policies, procedures and systems and hire additional personnel to comply with the new requirements. The staggered implementation of the Rules began July 9, 2002, with September 9, 2002 and November 6, 2002 as the effective dates for certain specified provisions. Implementation dates for certain of the SRO rules have also been delayed for small firms. As a result of numerous interpretive requests, on June 26, 2002, the Exchange and the NASD issued a Joint Memo providing interpretive guidance to certain rule provisions.[6]

According to NYSE, the Exchange, together with other regulatory organizations and SROs, is currently examining members' and member organizations' research practices to determine compliance with the new SRO Rules.

According to the NYSE, some of the interpretive issues raised by the industry and the preliminary findings from the recent examinations have highlighted the need for certain additional changes to the existing SRO Rules. NYSE believes that further amendments to the SRO rules will also be required to comply with the mandate of the Sarbanes-Oxley Act of 2002 (''SOA''), which requires the SEC, either directly or indirectly through SROs, to adopt not later than one year after the date of enactment of the Act (July 24, 2002), ''rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information.''

According to the NYSE, certain of the disclosure requirements and prohibitions that the SOA mandates have already been adopted in the new NYSE Rules. In some cases, the SOA appears to impose more stringent requirements. The NYSE is currently analyzing the differences between the SOA and NYSE Rules, to determine the extent of additional amendments to be made.

Proposed Amendments Regarding Research Analysts

The following proposed amendments to Exchange rules governing communications with the public expand upon the recently approved rule changes. The amendments generally provide for further restrictions on research analysts' compensation and trading activities, and impose additional disclosure requirements for research reports and associated persons.

Proposed amendments to Rule 472 would further separate an analyst's compensation from investment banking influence by requiring procedures for review and approval of research analysts' compensation by a Committee that reports to the Board of Directors or a senior executive. Recently approved amendments prohibit an associated person from being compensated for specific investment services transactions.

Such a Committee, at a minimum, would consider the following factors: the associated person's individual performance (*e.g.*, quality of research product), correlation between a research analyst's recommendations and stock prices, and overall ratings from various internal or external parties exclusive of member or member organization investment banking personnel.

Further, in determining an individual research analyst's compensation, the Committee may not consider his or her contribution to the firm's overall investment banking business. The basis for a research analyst's compensation would have to be documented and an annual attestation to the Exchange would certify that the Committee reviewed and approved each associated person's compensation and documented the basis for such approval (Rule 472(h)(1) and (2)).

Proposed Rule 472(b)(4) will prohibit a research analyst from issuing a research report or making a public appearance concerning a subject company if the research analyst engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member or member organization designating the member or member rganization as an underwriter of an initial public offering by the subject company.[7] Prohibiting research analysts from issuing research reports or making public appearances after participating in ''pitch'' meetings is intended to prevent the use or promise of research as an influence or a sales and marketing tool with prospective investment banking clients of the member or member organization, and would cause subject companies to choose a prospective investment banking firm based on the merits of its underwriting capabilities, rather than its research coverage.[8]

Due diligence communications between the research analyst and the subject company, the sole purpose of which is to analyze the financial condition and business operations of the subject company, is not subject to the prohibition. Recognizing the need for critical financial analysis of a subject company during the period an issuer is preparing to engage in a securities offering with the public, the rule allows research analysts to participate in due diligence communications. In doing so, the rule is intended to segregate legitimate research analyst duties/ functions, traditionally associated with their profession, from the sales/ marketing duties that they may have been called upon recently to do by their firms.

Proposed amendments to Rule 472 would prohibit the issuance of research reports by the manager or co-manager of a securities offering for fifteen (15) days prior to and after the expiration time of any ''lock-up agreement'' (Rule 472(f)(4)). This provision is intended to address situations where research analysts may issue positive research reports or reiterated ''buy'' recommendations shortly before or just after the expiration of a lock-up agreement. Through issuance or reiteration of ''buy'' recommendations,

[6] NYSE Information Memo No. 02–26 (June 26, 2002), and NASD Notice to Members 02–39 (July 2002).

[7] Telephone conversation between NYSE and Division Staff on December 30, 2002.

[8] Telephone conversation between NYSE and Division Staff on December 30, 2002.

shareholders of the subject company which were precluded from selling shares in the immediate aftermarket for specified periods of time, may be able to sell their shares at higher prices. Imposition of this fifteen (15) day blackout period around the expirations of lockups is intended to mitigate and/or eliminate the incentive for a research analyst to issue positive research reports, and should permit real market forces to determine the price at which such securities can be sold after the expiration of such agreements.

Proposed amendments to Rule 472 would require notification to customers when a member or member organization terminates research coverage of a subject company and require that the final report include a final recommendation or rating [9] (assuming the member or member organization had issued a prior rating or recommendation) [10] (Rule 472(f)(5)). This provision is intended to address situations where research analysts have discontinued following subject companies without changing their ratings of such companies, even though ratings changes, may have in many instances, been warranted. Thus, investors held the securities of such companies, often while these companies were deteriorating financially, without the benefit of guidance from the firms from which they had purchased them. The recently approved amendments to Rule 472 also address this issue, in part, by requiring the disclosure of a price chart versus changes in ratings in order to help investors track the correlation between a research analyst's rating/recommendation and the stock's price performance. NYSE believes that the proposed amendments would enhance this required disclosure by providing investors with notice of termination of coverage as well as any final rating the member or member organization has issued on the subject company.

As proposed, the definition of research analyst (associated person) would be amended to include research directors, supervisory analysts and others *e.g.*, committee members, who have direct influence, or control the preparation of research reports and establishment or change in ratings or price targets and thereby subject them to the trading and ownership prohibitions of the Rule (Rule 472.40) as research analysts.

As proposed, the current ten (10) and forty (40) day quiet periods for research analysts' issuance of research reports by managers and co-managers of initial and secondary offerings would be extended to include public appearances (Rule 472(f)(1) and (2)). Extending the quiet periods to public appearances would preclude members and member organizations from engaging in communications through public appearances that they are otherwise prohibited from making in written communications to the same standards. NYSE believes that subjecting all types of appearances and written communications should further remove any incentives for biased research recommendations in any potential type of medium.

The definition of ''public appearance'' would be amended to include research analysts'' making a recommendation in a newspaper article or similar public medium (Rule 472.50). Extending the definition of public appearance to recommendations in a newspaper article would require research analysts to make the same disclosures that they are required to make in other public appearances.[11]

Proposed amendments to Rule 344 (''Supervisory Analysts'') would establish a new registration category and require a qualification examination for research analysts (Rule 344). In addition, Rule 345A (''Continuing Education for Registered Persons'') would be amended to include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules and regulations, ethics, and professional responsibility (Rule 345A(b) and .50).

NYSE believes that research analysts as securities professionals perform vital functions for their members or member organizations in the public equity markets. As such, they should be subject to the highest ethical and professional competency standards. Accordingly, NYSE believes that establishing a new registration category with a corresponding qualifying examination will raise such standards. Further, including research and supervisory analysts as covered persons in the Firm Element component of Continuing Education Programs would place an obligation on members and member organizations to ensure that they are receiving the requisite ethics and professional responsibility training that NYSE believes they will require to properly conduct their duties as research analysts.

The Exchange is making certain clarifying amendments to Rule 472 that would make it more uniform with the NASD rule and would bring it into conformity with certain of the new requirements of the Act.

Rule 472 is being amended to require that the nature of a research analyst's financial interest in a subject company's securities be disclosed in research reports and public appearances, including whether the interest consists of any option, right, warrant, futures contract, or long or short position, etc. This would make NASD and NYSE rule texts consistent with each other (Rule 472(k)(1)(i)(b).

Proposed amendments to Rule 472(l) with respect to specified communications activities, including, interviews with the media, writing books and newspaper/periodical articles etc., engaged in by members, allied members or employees, would clarify the approval and supervisory requirements for such activities.

As proposed, the term ''research report'' as it is currently defined in the Rule 472 is being amended to conform to the Act's definition by deleting the criterion of providing a recommendation from the criteria that determines what constitutes a research report (Rule 472.10(2)). NYSE believes conforming the definition to the one required by the SOA would help facilitate members' and member organizations' future compliance with the SOA in the least disruptive manner.

2. NYSE's Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act [12] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

3. NASD's Purpose

Background

In May 2002, the SEC approved new NASD Rule 2711 and similar amendments to existing New York Stock Exchange (''NYSE'') rules that increased the regulation of research analysts and research reports.[13] The new rules are intended to improve the objectivity of

[9] The Exchange requested that Commission Staff delete the reference to a final recommendation or rating ''if any'' in order to conform to changes made by NYSE Amendment No. 1.

[10] Telephone conversation between NYSE and Division Staff on December 30, 2002.

[11] The Exchange requested that Commission Staff delete the reference to ''research reports.'' Telephone conversation between NYSE and Division Staff on December 30, 2002.

[12] 15 U.S.C. 78f(b)(5).

[13] *Supra* note 5,m *See also* Securities Exchange Act Release No. 46402 (June 6, 2002), 67 FR 40361 (June 12, 2002)(correcting language contained in rule 2711(h)).

research and provide investors with more useful and reliable information when making investment decisions. Most of the new rules' provisions became effective on July 9, 2002, although some provisions took effect on September 9, 2002, and one provision took effect on November 6, 2002. Additionally, in July 2002, the SEC approved an NASD rule proposal to delay until November 6, 2002 the effectiveness of certain provisions for certain members with foreign affiliates, certain research analysts that are divesting the securities of all subject companies that they cover, and certain defined small firms.[14]

In June 2002, NASD and the NYSE issued a joint memorandum that provided members with the new rule language, as well as interpretive guidance on a number of Rule 2711's provisions.[15] NASD and the NYSE also have been examining members' research practices to determine compliance with the new research analyst rules.

According to NASD, as a result of the examinations and further discussions with the SEC staff, NASD and NYSE agreed that additional rules governing members' research activities are necessary to protect investors. This rule change proposal would effectuate those additional safeguards. Generally, the proposed amendments would further separate analyst compensation from investment banking influence, prohibit analysts from issuing ''booster shot'' research reports, prohibit analysts from participating in ''bake-off'' meetings with prospective investment banking clients, require members to publish a final research report when they terminate coverage of a subject company, impose registration, qualification and continuing education requirements on research analysts, and make certain other changes.

NASD believes that these amendments do not implement all of the changes that may be required pursuant to the research analyst provisions of the SOA. NASD anticipates filing additional proposed amendments to Rule 2711 in the future to meet the requirements of SOA after further discussions with NYSE and SEC staff.

A more detailed discussion of the proposed rule change follows.

1. Analyst Compensation

The proposed amendments would require members to further separate analyst compensation from investment banking influence by imposing new restrictions on the manner in which research analysts may be compensated. The rule proposal would require members to employ a compensation committee that reports to the member's board of directors (or if the member does not have a board of directors, a senior executive officer of the member) responsible for reviewing and approving analyst compensation at least annually. The committee could not have representation from the member's investment banking department. In determining an analyst's compensation, the committee would have to consider, if applicable, the research analyst's individual performance, including the analyst's productivity and research quality, the correlation between the analyst's recommendations and stock price performance, and overall ratings of clients, sales force, and peers independent of the member's investment banking department. The committee could not consider the analyst's contributions to the member's investment banking business.

The committee would be required to document the basis for establishing the analyst's compensation. The member also would have to attest annually to NASD that the committee reviewed and approved each analyst's compensation and documented the basis upon which the compensation was established.

2. Restrictions on Publishing Research Reports and Public Appearances

The proposed amendments would make several changes to current Rule 2711(f), which imposes ''quiet periods'' on members during which members may not publish research reports following an initial or secondary public offering of securities. First, the proposed amendments would extend the quiet period prohibitions to public appearances by research analysts as well as to the issuance of research reports.

Second, the proposed amendments would prohibit ''booster shot'' research reports or public appearances around the time of the expiration, waiver or termination of a ''lock-up'' agreement. Members often enter into lock-up agreements with subject companies or their shareholders that restrict or prohibit the sale of a subject company's or its shareholder's securities for a defined period after the completion of a securities offering. This provision would prohibit members from publishing a research report or making a public appearance concerning a subject company for 15 days prior to or after the expiration, waiver or termination of a lock-up agreement, thus helping prevent members from publishing favorable research that is intended to benefit the shareholders whose lock-up agreement is no longer in effect by driving up the price of the issuer's shares. However, the rule proposal includes an exception that would allow members to publish research reports during this quiet period to comment on the effect of significant news or a significant event on the subject company, provided that the legal and compliance department authorizes the publication of the report before it is issued. A similar exception exists with respect to quiet periods in the current rule.

Third, the proposed amendments would require a member that decides to terminate coverage of a subject company to publish a notice of this termination, and to publish its final rating or recommendation of the subject company's securities (assuming the member had issued a prior rating or recommendation). This provision is intended to eliminate the practice of dropping coverage of a subject company rather than lowering a rating or recommendation.

3. Bake-Offs

The proposed amendments would prohibit a research analyst from issuing a research report or making a public appearance concerning a subject company if the research analyst communicated with the subject company in furtherance of obtaining investment banking business before the subject company had entered into a letter of intent or other written agreement designating the member as an underwriter of an initial public offering of the subject company. This provision would not apply to due diligence communications between an analyst and a subject company where the sole purpose is to analyze the financial condition and business operations of the subject company. The purpose of this provision is to prevent research analysts from attending ''bake-off'' meetings or otherwise communicating with a subject company where the intention is to pitch the member's investment banking services.

4. Registration, Qualification and Continuing Education of Research Analysts

The proposed amendments would create new NASD Rule 1050, which would require all persons associated with a member that function as research analysts to register with NASD. For purposes of Rule 1050, ''research analyst'' would be defined as any associated person who is directly responsible for the preparation of

[14] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[15] *See* Notice to Members 02–39 (July 2002).

research reports. Before these persons' registrations could become effective, they would be required to pass a qualification examination for research analysts specified by NASD. The proposed amendments also would amend Rule 1120 to require research analysts to participate in the regulatory element and firm element of a member's continuing education program. The firm element program would have to include research analysts' training and education in ethics, professional responsibility and the requirements of Rule 2711.

5. Definitions

The proposed amendments would revise the definition of ''research analyst'' to include supervisors of research analysts, including directors of research and members of supervisory committees. The proposed expanded definition would apply only with respect to the personal trading restrictions of Rule 2711(g). NASD believes the amendment is necessary because these supervisory personnel review and often greatly influence the content of and recommendation contained in research reports and therefore should be subject to the same trading restrictions, such as the prohibition on trading against the member's recommendation. The other provisions of Rule 2711 that govern research analyst conduct and disclosures would not apply to supervisors of research analysts.

Additionally, the definition of ''public appearance'' would be revised to include interviews with print media and the writing of a print media article by a research analyst. In NASD's experience, the opinions and recommendations by research analysts made in the print media, specifically in opinion pieces, have created some of the same concerns as those made in radio and television appearances, which are covered by the current definition. NASD is modifying the guidance discussed in NASD's Notice to Members 02–39 concerning the making of the required disclosures in public appearances with media outlets. An analyst would not violate the rule if the analyst makes the required disclosures to the print, radio or television media in good faith, even if the media outlet does not print or broadcast the information. NASD thus recognizes the independent editorial discretion of the print, radio and television media.

6. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) [16] of the Act, which require, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change would eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NYSE and NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NYSE and NASD have worked together to develop these proposals. The Commission specifically requests comment on the substance of the proposals, and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues. The Commission also specifically seeks comment on the practicalities of making the required disclosures in print media and other public appearances. The Commission requests comment on whether the SROs should consider whether there are other effective means (including abbreviated disclosures) to alert investors of conflicts in the context of public media appearances that would take into account possible space or time limitations.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposals, as amended, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File Nos. SR–NASD–2002–154 and SR–NYSE–2002–49 and should be submitted by March 10, 2003.

Copies of the rule filings, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the rule filings and amendments will also be available for inspection and copying at the principal offices of the SROs and on the SROs' respective Web sites (*http://www.nyse.com* and *http://www.nasd.com*).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–223 Filed 1–6–03; 8:45 am]

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[16] 15 U.S.C. 78o–3(b)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47114; File No. SR–OC–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products

December 31, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 7, 2002, OneChicago, LLC (''OneChicago'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by OneChicago. On December 11, 2002, OneChicago filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with written certifications under Section 5c(c) of the Commodity Exchange Act (''CEA'') [3] on November 6 and 7, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rules

OneChicago is proposing to adopt rules on listing standards for security futures contracts (''Eligibility and Maintenance Criteria for Security Futures Products'') to comply with the requirements under Section 6(h)(3) of the Act [4] and the criteria under Section 2(a)(1)(D)(i) of the CEA.[5] The OneChicago Listing Standards are, for the most part, substantially identical to the sample listing standards (the ''Sample Listing Standards'') included in Staff Legal Bulletin No. 15 (''SLB 15''),[6] except that the OneChicago Listing Standards:

- Reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC with respect to shares of exchange-traded funds, trust-issued receipts, shares of registered closed-end management investment companies, and American Depositary Receipts (''ADRs'') [7] and
- Establish an approximately equal dollar-weighting methodology for physically settled futures based on narrow-based security indices (such indices are referred to hereafter as ''NBIs''), which (i) Requires the number of each component security to be rounded up or down to the nearest multiple of 100 shares or receipts in the course of the initial index composition and any subsequent rebalancing, (ii) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by OneChicago's ability to rebalance indices on an interim basis if it so elects, and (iii) ensures that outstanding contracts will not be affected by any rebalancing.

In connection with the adoption of the OneChicago Listing Standards, OneChicago is proposing the following rule changes, which are referenced in Item II.A.1.b below, from the version of the OneChicago Rulebook filed as part of OneChicago's notice registration with the Commission on Form 1–N: [8]

- An amendment to its Rule 213 (the ''Information Sharing Rule''), to add the following text after the first sentence: ''The Chief Executive Officer, or his or her delegate, is authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement.'';
- An amendment to its Rule 603 (the ''Market Manipulation Rule''), to (i) remove the reference to market demoralization from the heading and (ii) replace the reference to ''upsetting the equilibrium of the market in any Contract'' with the words ''generating unnecessary volatility'';
- An amendment to its Rule 605 (the ''Sales Practice Rule''), to provide that each Clearing Member, Exchange Member (including its Related Parties) and Access Person shall comply with any and all sales practice rules from time to time promulgated by the National Futures Association (''NFA'') (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the National Association of Securities Dealers, Inc. (''NASD'') (in the case of any other Clearing Member, Exchange Member or Access Person) with respect to security futures.
- An amendment to its Rule 610 (the ''Trading Ahead Rule'') to remove the requirement that a customer's consent under such rule be in writing and indicated on each relevant order; and
- An amendment to its Rule 611 (the ''Trading Against Rule''), to remove the requirement that a customer's consent under such rule be in writing and given or renewed within 12 months of the transaction at issue.

OneChicago is also filing herewith proposed Rules 403, 415, 419, 501, 601, 602, 604, 612 and 613, which remain unchanged from the Rulebook filed with the Commission as part of OneChicago's notice registration on Form 1–N.[9] OneChicago Rule 515, while also referenced in Item II.A.1.b below, is not filed in this proposed rule change because it was the subject of a separate filing by OneChicago on Form 19b–4, and was approved by the Commission on November 7, 2002.[10]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 6(h)(3) of the Act [11] sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(h)(3).

[5] 7 U.S.C. 2(a)(1)(D)(i).

[6] SEC, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) [available at *http://.sec.gov*].

[7] *See* Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) *and* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

[8] *See* Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10–133).

[9] *See* Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10–133).

[10] *See* Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR–OC–2002–01).

[11] 15 U.S.C 78f(h)(3).

exchange[12] and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.[13]

a. OneChicago Listing Standards

According to OneChicago, Commission staff published SLB 15, including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or security indices), to provide guidance as to how an exchange can comply with the foregoing requirements, but noted that different listing standards could also be consistent with the Act.

OneChicago believes that the Sample Listing Standards, as modified by the order relating to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies,[14] constitute a useful and appropriate model to be used in developing initial listing and maintenance standards for security futures products. The OneChicago Listing Standards therefore generally follow the Sample Listing Standards (as so modified), subject to the additional modifications relating to physically settled futures based on NBIs described under Item I. above. The additional modifications are (i) a function of OneChicago's providing for physical settlement of futures contracts based on NBIs, and accordingly, are limited in application to such physically settled contracts, and (ii) designed to enhance the usefulness and effectiveness of futures on NBIs in connection with hedging, arbitrage and other investment strategies.

Unlike options on security indices currently listed on national securities exchanges, all NBI futures to be listed on OneChicago are expected to be physically settled. OneChicago believes that physical settlement will effectively reduce the basis risk related to trading in these products and lead to tighter bid-ask spreads, thereby limiting the potential for market manipulation. OneChicago believes that its decision in favor of physical settlement therefore furthers the statutory objective of avoiding price manipulation of security futures products and their underlying securities.[15] Physical settlement, however, makes it impracticable to have NBIs consisting of component securities in increments that are smaller than 100 shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding is a necessary step in the initial index composition and any subsequent rebalancing.

If the composition of NBIs were subject to frequent or retroactive changes as a result of index rebalancings, OneChicago believes that NBI futures would lose their potential as particularly useful and effective tools in the implementation of hedging, arbitrage and other investment strategies.

The Sample Listing Standards contemplate at least quarterly rebalancings of equal dollar-weighted indices. The OneChicago Listing Standards modify this requirement by providing that an approximately equal dollar-weighted NBI underlying a physically settled security futures product is to be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. OneChicago believes that this test adequately balances the potential adverse consequences of too frequent changes in the composition of any NBI with the objective that an NBI should be, and remain, representative of the industry segment to which it relates. OneChicago will have the ability to rebalance any NBI on an interim basis should this become necessary as a result of exceptional changes in the relative values of the component securities. As OneChicago plans to list only contracts expiring on the next two quarterly expiration dates (based on the quarterly cycle of March, June, September and December) and the nearest two serial monthly expiration dates that are not quarterly expiration dates, OneChicago will be able to phase in contracts based on a rebalanced NBI, and thereby replace contracts with open interest based on the previous NBI composition, within a short period of time.

OneChicago believes it is critical, however, that investors with open positions in contracts based on a particular NBI be able to rely on the number of shares or receipts evidencing each component security remaining unchanged for purposes of those contracts. Accordingly, the OneChicago Listing Standards clarify that outstanding contracts will not be affected by any rebalancing.

Unlike the Sample Listing Standards (and the listing standards for options on which they are based), exchange rules and other requirements applicable to a variety of financial instruments based on ''narrowly-based'' security indices or baskets contemplate modifications to a pure equal dollar-weighted composition methodology and/or do not require automatic periodic rebalancings. For example, OneChicago believes that the rules of the American Stock Exchange (''Amex'') for portfolio depositary receipts[16] and index fund shares[17] expressly permit a ''modified equal-dollar weighting methodology'' and do not appear to provide for rebalancing. Similarly, no rebalancing is required for the component securities represented by any series of trust-issued receipts traded on Amex.[18] Further, OneChicago notes that the offering documents for the ''Holding Company Depositary Receipts (HOLDRS)'' developed by Merrill Lynch & Co., Inc., another exchange-listed instrument designed to enable investors to indirectly gain exposure to equity securities of multiple issuers through a single investment, specify that the underlying trust assets will not change during the (indefinite) term of the trust unless one of several narrowly defined ''reconstitution events'' occurs. In this connection, OneChicago notes that single-security futures based on at least some of the aforementioned instruments are permissible under the relief granted by the Commission and the CFTC[19] with respect to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies.

The contents of the OneChicago Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed. Finally, OneChicago believes that it is also worth noting that, despite the differences between the OneChicago Listing Standards and the Sample Listing Standards, hypothetical indices following one or the other methodology have been shown to be highly correlated.

b. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act[20] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how OneChicago will comply with it,

[12] 15 U.S.C. 78f(h)(3)(C).

[13] 15 U.S.C. 78f(h)(3)(H).

[14] *See supra* note 7.

[15] *See* 15 U.S.C. 78f(h)(3)(H).

[16] *See* Amex Rule 1000, in particular Commentary .03 thereto.

[17] *See* Amex Rule 1000A, in particular Commentary .02 thereto.

[18] *See* Amex Rule 1202, in particular Commentary .01 thereto.

[19] *See supra* note 7.

[20] 15 U.S.C. 78f(h)(3).

whether by particular provisions in the OneChicago Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act [21] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[22] This requirement is addressed by sections I.A.(ii), II.A.(i), III.A.(ii)(b) and IV.A.(ii)(a) of the OneChicago Listing Standards.

Clause (B) of Section 6(h)(3) of the Act [23] requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. All security futures products initially proposed to be traded on OneChicago will be physically settled. OneChicago has entered into arrangements with both The Options Clearing Corporation (''OCC'') and the clearinghouse of the Chicago Mercantile Exchange Inc. (''CME''), both of which are registered clearing agencies, relating to the clearing of security futures products. By virtue of the CME clearinghouse being an associated clearinghouse of OCC, and OCC having in place arrangements with the National Securities Clearing Corporation for the delivery of securities underlying physically settled security futures products, OneChicago believes that the payment and delivery of the securities underlying OneChicago's security futures products in accordance with the statutory requirements should be ensured.

Clause (C) of Section 6(h)(3) of the Act [24] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[25] For the reasons discussed under Item II.A.1. above, notwithstanding specified differences between the Sample Listing Standards and the OneChicago Listing Standards, OneChicago believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act [26] requires that each security future be based on common stock or such other equity securities as the Commission and the CFTC jointly determine appropriate. This requirement is addressed by sections I.A(i), III.A(ii)(c) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (E) of Section 6(h)(3) of the Act [27] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to Section 6(h)(7) of the Act,[28] the foregoing requirement is deferred until the ''compliance date'' (as defined therein). OneChicago expects that both OCC and the CME clearinghouse will have in place procedures complying with the requirements of clause (E) after such ''compliance date.''

Clause (F) of Section 6(h)(3) of the Act [29] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act [30] effect transactions in a security futures product. This requirement is addressed by the Sales Practice Rule. As amended, the Sales Practice Rule requires all security futures intermediaries entering into transactions on OneChicago to comply with the applicable sales practice rules from time to time promulgated by the NFA (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the NASD (in the case of any other Clearing Member, Exchange Member or Access Person), both of which are national securities associations.

Clause (G) of Section 6(h)(3) of the Act [31] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA [32] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act [33] and the rules and regulations thereunder. Security futures intermediaries trading on OneChicago will be subject to the aforementioned statutory and regulatory prohibitions against dual trading by virtue of OneChicago Rule 604 previously included in Exhibit A–5 to OneChicago's Form 1–N, filed with the Commission on August 20, 2002,[34] which requires such intermediaries to comply with all applicable law. OneChicago Rules 610 through 613 contain customary provisions relating to the priority of customers' orders, trading against customers' orders, withholding orders and disclosing orders, consistent with Regulations §§ 155.2 through 155.4 under the CEA.[35] The amendments reflected in Rules 610 and 611 as filed herewith reflect the fact that the customer consents referred to therein are not generally required to be in writing or renewed. OneChicago notes, however, that the prohibition of dual trading in security futures products as set forth in Regulation § 41.27[36] adopted pursuant to Section 4j(a) of the CEA [37] by its terms only applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined algorithm. Since those conditions do not exist on OneChicago, OneChicago has no specific rule prohibiting dual trading.

Clause (H) of Section 6(h)(3) of the Act [38] provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. As discussed in Item II.A.1. above, the eligibility and maintenance criteria for security futures products contained in the OneChicago Listing Standards have been designed to ensure that the products that will be listed on OneChicago and the underlying securities will not be readily susceptible to price manipulation. In addition, Rule 603 in the OneChicago Rulebook, as amended by this filing, prohibits market manipulation (including generating unnecessary volatility or creating a condition where prices do not or will not reflect fair market values). The amendments reflected in Rule 603 as filed herewith were designed to avoid the use of terms or concepts that are not germane to futures markets. OneChicago Rules 415(b) and 419 implement the requirements contained in Rule 6h-1, under the Act [39] relating to settlement and regulatory halts with respect to security futures products.

[21] 15 U.S.C. 78f(h)(3)(A).
[22] 15 U.S.C. 78l.
[23] 15 U.S.C. 78f(h)(3)(B).
[24] 15 U.S.C. 78f(h)(3)(C).
[25] 15 U.S.C. 78*o*–3(a).
[26] 15 U.S.C. 78f(h)(3)(D).
[27] 15 U.S.C. 78f(h)(3)(E).
[28] 15 U.S.C. 78f(h)(7).
[29] 15 U.S.C. 78f(h)(3)(F).
[30] 15 U.S.C. 78o–3(a).
[31] 15 U.S.C. 78f(h)(3)(G).
[32] 7 U.S.C. 4j.
[33] 15 U.S.C. 78k(a).
[34] *See supra* note 8.
[35] 17 CFR 155.2–155.4.
[36] 17 CFR 41.27.
[37] 7 U.S.C. 4j(a).
[38] 15 U.S.C. 78f(h)(3)(H).
[39] 17 CFR 240.6h–1.

Clause (I) of Section 6(h)(3) of the Act[40] requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The relevant provisions are OneChicago Rules 601, 602 and 603, which prohibit fraudulent acts, fictitious transactions and market manipulation, respectively. OneChicago notes that it is an affiliate member of the Intermarket Surveillance Group (''ISG'') and has executed an affiliate agreement, an agreement to share market surveillance and regulatory information and an addendum to the foregoing agreements with the other ISG members. The Information Sharing Rule permits OneChicago to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators. To the extent permitted by any such agreement, OneChicago's Chief Executive Officer, or his or her designee, will be authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement. Additional provisions related to coordinated surveillance are contained in sections I.A.(ix)(a), III.A(ii)(g) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (J) of Section 6(h)(3) of the Act[41] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The audit trail capability provided by CBOE*direct,* the trade matching engine utilized by OneChicago, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on OneChicago. This applies to orders entered through CBOE*direct* terminals as well as to orders routed to CBOE*direct* through CME's Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct* or Globex®), terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code and clearing firm.

OneChicago's electronic audit trail will consist of data recorded by CBOE*direct* and Globex®, and OneChicago will have full access to all such data. Information logged by CBOE*direct,* including in respect of orders received through CBOE*direct* terminals, will be archived and provided to OneChicago each day. Orders received through Globex® will be archived and maintained at CME. Together these data sets will enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either Chicago Board Options Exchange, Inc (''CBOE'') or CME systems, and therefore will not be recorded electronically by CBOE*direct* and Globex® at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped and include the account designation, date and other required information (*i.e.*, order terms, order type, instrument and contract month, price and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member and Access Person must keep all books and records as required to be kept by it pursuant to the CEA, CFTC regulations, the Act, regulations under the Act and the Rules of OneChicago. OneChicago Rule 501 also requires that such books and records be made available to OneChicago upon request. Current CFTC regulations require books and records to be maintained for a period of five years.

Block trades will be entered in CBOE*direct* by OneChicago's operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to OneChicago. Generally, the same procedures apply to exchange of future for physical (''EFP'') transactions, except that no verbal report is required for such transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE's or CME's systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the procedures specified in the preceding paragraph.

Clause (K) of Section 6(h)(3) of the Act[42] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. OneChicago Rule 419 provides for trading in a security future to be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Clause (L) of Section 6(h)(3) of the Act[43] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[44] OneChicago believes that its proposed Rule 515 regarding customer margin is consistent with the requirements of the Act. [45]

For the reasons described above, OneChicago submits that the OneChicago Listing Standards and the proposed changes to the Information Sharing Rule, the Market Manipulation Rule, the Sales Practice Rule, the Trading Ahead Rule, the Trading Against Rule and the other proposed OneChicago rules filed herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.[46]

2. Statutory Basis

One Chicago has filed these proposed rules pursuant to Section 19(b)(7) of the Act.[47] OneChicago believes that the OneChicago Listing Standards are authorized by, and consistent with, Section 6(b)(5)[48] of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to

[40] 15 U.S.C. 78f(h)(3)(I).

[41] 15 U.S.C. 78f(h)(3)(J).

[42] 15 U.S.C. 78f(h)(3)(K).

[43] 15 U.S.C. 78f(h)(3)(L).

[44] 15 U.S.C. 78g(c)(2)(B).

[45] The Commission notes that OneChicago's Rule 515 regarding customer margin was approved on November 7, 2002. Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR–OC–2002–01). *See supra* note 9.

[46] 15 U.S.C. 78f(h)(3).

[47] 15 U.S.C. 78s(b)(7).

[48] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the OneChicago Listing Standards will have an impact on competition because (i) It can be expected that other self-regulatory organizations that will list security futures products will adopt substantially similar listing standards and (ii) any concerns about possible anti-competitive effects should be evaluated in light of the standards applicable to other financial instruments based on ''narrowly based'' security indices or baskets, which are consistent with the OneChicago Listing Standards. In addition, OneChicago does not believe that the proposed amendment to the Information Sharing Rule will have an impact on competition because such amendment deals with procedural aspects of sharing information and is not substantive. Similarly, OneChicago does not believe that the proposed amendment to the Sales Practice Rule will have an impact on competition because it is designed to reflect the fact that members of OneChicago that are registered with the NFA will be subject to the sales practice rules of such organization rather than the sales practice rules of the NASD. Finally, OneChicago does not believe that the proposed amendments to the Market Manipulation Rule, the Trading Ahead Rule or the Trading Against Rule or the other proposed rules will have an impact on competition because such amendments constitute non-substantive changes to reflect market practice in the areas to which they relate.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

Comments on the OneChicago Listing Standards have not been solicited.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[49] the proposed rule change, as filed with the Commission on November 7, 2002, became effective on November 8, 2002. Amendment No. 1 to the proposed rule change became effective on December 11, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[50]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*).

All submissions should refer to File No. SR–OC–2002–04 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–272 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[49] 15 U.S.C. 78s(b)(7)(B).

[50] 15 U.S.C. 78s(b)(1).

[51] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47109; File No. SR–Phlx–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Increase the Transaction Charge for Off-Floor Broker-Dealer Orders Delivered via AUTOM and Executed via AUTO–X

December 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 16, 2002, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to increase the off-floor broker-dealer equity option transaction charge from $.35 per contract to $.45 per contract for orders delivered through the Phlx Automated Options Market (''AUTOM'') System, and automatically executed by the Exchange's Automatic Execution System (''AUTO–X'').[3] The $.45 per contract transaction charge applicable to off-floor broker-dealer orders entered via AUTOM and executed via AUTO-X will apply to transactions in equity options only.[4] The option transaction charge applicable to off-floor broker-dealer orders not executed by AUTO–X remains at $.35 per contract. The Exchange intends to implement this fee on transactions settling on or after January 2, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[4] This fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange by charging a $.45 transaction charge for off-floor broker-dealer orders that are delivered via AUTOM and executed automatically via AUTO–X.

Currently, the Exchange charges a fee of $.35 per contract for all off-floor broker-dealer transactions, regardless of how such an order is executed. The $.35 charge will continue to apply to off-floor broker-dealer orders not executed by AUTO–X.

The $.35 charge for non-AUTO–X transactions and the $.45 charge for AUTO–X transactions apply to members for orders, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. Accordingly, an order for the account of an ROT entered from off-floor would be subject to one of the two charges.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members relating to the automatic execution of off-floor broker-dealer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–2002–78 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–270 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 24, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 6, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1681.
Form Number: IRS Form A.
Type of Review: Extension.
Title: Qualifications & Availability Form.
Description: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.
Respondents: Individuals or households.
Estimated Number of Respondents: 90,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 45,000 hours.
OMB Number: 1545–1685.
Regulation Project Number: REG–103735–00 NPRM and Temporary.
Type of Review: Extension.
Title: Tax Shelter Disclosure Statements.
Description: The regulations provide guidance on the filing requirement under section 6011 for certain corporate taxpayers engaged in transactions producing tax savings in excess of certain dollar thresholds.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents/Recordkeepers: 1.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1 hour.

OMB Number: 1545–1686.

Regulation Project Number: REG–103736–00 NPRM and Temporary.

Type of Review: Extension.

Title: Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.

Description: The regulations provide guidance on the requirement under section 6112 to maintain a list of investors in potentially abusive tax shelters.

Respondents: Business or other for-profit, individual or household.

Estimated Number of Recordkeepers: 150.

Estimated Burden Hours Per Recordkeeper: 100 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 15,000 hours.

OMB Number: 1545–1687.

Regulation Project Number: REG–110311–98 NPRM and Temporary.

Type of Review: Extension.

Title: Corporate Tax Shelter Registration.

Description: The regulations provide the guidance required to activate the registration requirements of Internal Revenue Code (IRC) section 6111 and penalty provisions of IRC section 6707 for confidential corporate tax shelters described in IRC section 6111(d).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Burden Hours Per Respondent: 15 minutes.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–267 Filed 1–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet January 21–23, 2003, from 8:30 a.m. to 5 p.m. each day. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to healthcare, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On January 21, the agenda topics for this meeting will include briefings and updates on the Women Veterans Health Program, the National Survey of Veterans, Board of Veterans Appeals issues, legislative issues affecting women veterans, community-based outpatients clinics, and the National Women Veterans Study. On January 22, the Committee will be briefed on Committee requirements, compensation and pension benefits, VA-funded research on women veterans, the status of the VA Homeless Program and related issues that the Committee members may choose to introduce. On January 23, discussions will include briefings regarding the VA Domiciliary Programs and the 8 Comprehensive Women Veterans Health Centers. The Committee is tentatively scheduled for a briefing on Capitol Hill and from the Department of Labor, Veterans Employment and Training Service.

Any member of the public wishing to attend should contact Ms. Maryanne Carson, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Carson may be contacted either by phone at (202) 273–6193, fax at (202) 273–7093 or e-mail at *00W@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting, or within 10 days after the meeting.

Dated: December 23, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–258 Filed 1–6–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments that occur during calendar year 2003.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Legislation and Regulatory Division (402B3), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Pub. L. 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2003 is the average cost of Government-furnished graveliners in fiscal year 2002, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development

projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $162.90 for fiscal year 2002.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.75 for calendar year 2003.

The net allowance payable for qualifying interments occurring during calendar year 2003, therefore, is $153.15.

Approved: December 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–217 Filed 1–6–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 4
Tuesday, January 7, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A–201–827]

Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico

Correction

In notice document 02–33134 beginning on page 81 in the issue of Thursday, January 2, 2003, make the following correction:

On page 81, in the third column, in the **EFFECTIVE DATE** section, in the first and second lines, ''(Insert date of publication in the **Federal Register**).'' should read, ''January 2, 2003''.

[FR Doc. C2–33134 Filed 1–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 7, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9, 710, and 723
TSCA Inventory Update Rule Amendments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 710, and 723

[OPPT–2002–0054; FRL–6767–4]

RIN 2070–AC61

TSCA Inventory Update Rule Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments to the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Rule (IUR). The IUR currently requires manufacturers (including importers) of certain chemical substances on the TSCA Chemical Substances Inventory to report data on each chemical's current production volume, site–limited status, and plant site information every 4 years. Through these IUR amendments (IURA), EPA is requiring the reporting of additional data for certain chemicals to assist EPA and others in screening potential exposures and risks resulting from industrial chemical operations and commercial and consumer uses of TSCA chemical substances. EPA is also modifying the IUR reporting and recordkeeping requirements, removing one reporting exemption and creating others, and modifying its procedures for making Confidential Business Information claims. EPA is also making certain non–substantive technical corrections.

DATES: This final rule is effective February 6, 2003. For purposes of judicial review, this rule shall be promulgated at 1 p.m. eastern daylight/ standard time on January 21, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8170; e–mail address: TSCA–Hotline@epa.gov.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8789; e–mail address: sharkey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) chemical substances currently subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710 or if you manufacture inorganic chemical substances. Any use of the term ''manufacture'' in this document will encompass ''import,'' unless otherwise stated. In the past, persons that only are processors of chemical substances have not been required to comply with the requirements of 40 CFR part 710. These amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected categories and entities may include, but are not limited to:

Chemical manufacturers and importers currently subject to IUR reporting, and chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in § 710.48 in the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document or Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2002–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Background

A. What Action is the Agency Taking?

1. *Substantive changes to the CFR*. EPA is promulgating amendments to the IUR (IURA) which were proposed on August 26, 1999 (64 FR 46772) (FRL–6097–4), taking into consideration comments received on the proposal. The amendments to the IUR that are contained in this final rule, as well as the inventory update provisions of 40 CFR part 710 that are unchanged by these amendments, appear in a new subpart C to 40 CFR part 710. The inventory update provisions that apply to the 2002 update remain unchanged although the Agency has added subpart headings in order to distinguish the provisions that apply to the 2002 update (i.e., the existing IUR) and the new and revised provisions promulgated in this rule. The following is a brief listing of the primary changes to the IUR, which do not affect the regulations in place for IUR reporting in 2002. These changes are described in more detail in this document, along with a summary of the comments received and the Agency's summary response to those comments.

First, EPA is amending the existing IUR regulations, 40 CFR 710.28 and 710.32, which appear in the new subpart C as §§ 710.48 and 710.52, to raise the production volume basic

reporting threshold from the current 10,000 pounds (lbs.) per year to 25,000 lbs. per year, and to add a new larger-volume reporting threshold of 300,000 lbs. per year for the reporting of processing and use information.

Second, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to add exposure–related information to the existing reporting requirements for chemical substances covered by the IUR. Specifically, the Agency is requiring that manufacturers subject to the amended rule (''submitters'') report, in ranges: (1) The number of workers reasonably likely to be exposed to the chemical substance at the site of manufacture; (2) the physical form(s) in which the chemical substance is sent off–site; (3) the percentage of total reported production volume associated with each physical form; and (4) the maximum concentration of the chemical substance at the time it leaves the submitter's manufacturing site or, if the chemical substance is site–limited, the maximum concentration at the time it is reacted on–site to produce a different chemical substance.

Third, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to require chemical manufacturers of chemical substances with production volumes of 300,000 lbs. or greater to report certain exposure–related information concerning the processing and use of each reportable chemical substance that is conducted at sites that receive the reportable chemical substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not) (including through a broker/distributor, from a customer of the submitter, etc.). Specifically, manufacturers of these larger–production volume chemical substances will be required to report, to the extent the information is readily obtainable:

- The type of industrial processing or use operation(s) at each site, including downstream sites.
- The five–digit NAICS codes that best describe the industrial activities during the processing or use operation.
- The industrial function of each chemical substance during the processing or use operation, for each NAICS code reported.
- The percentages of the submitter's production volume used in each industrial function category.
- The number of sites where the various processing or use operations occur.
- The number of workers reasonably likely to be exposed to the chemical substance in each processing or use operation.
- The categories of commercial and consumer uses of the reportable chemical substance.
- An indication of the presence of the reportable chemical substance in or on consumer products intended for use by children.
- The percentages of the submitter's production volume associated with each commercial and consumer product category.
- The maximum concentration of the reportable chemical substance in each commercial and consumer product category.

Fourth, EPA is revoking the current full exemption from IUR reporting at 40 CFR 710.26(a) for inorganic chemical substances, and is phasing in reporting for these substances, which appears in the new subpart C as § 710.46(b)(3). For the first submission period following promulgation of IURA (i.e., the 2006 submission period), EPA is requiring partial reporting for these substances (i.e., inorganic chemical substances will not be subject to the reporting of processing and use information). In subsequent submission periods, manufacturers of an inorganic substance will be subject to full reporting (i.e., including the processing and use information reporting requirements), to the extent that they manufacture at least 300,000 lbs. of the substance at a site during a given reporting year.

Fifth, EPA is amending 40 CFR 710.26, which appears in the new subpart C as § 710.46(b)(1), to create a partial reporting exemption for certain chemical substances termed ''petroleum process streams'' for purposes of reporting under the IURA (i.e., these chemical substances are not subject to the reporting of processing and use information).

Sixth, EPA is providing, in 40 CFR 710.46(b)(2), a partial exemption for specific chemical substances (i.e., these chemical substances are not subject to the reporting of processing and use information) where EPA has identified that there is a low current interest in the IURA processing and use information related to the chemical. EPA has identified a list of chemicals that are covered by this partial exemption, and provides a process for revising this list over time because interest in the IURA processing and use information for a particular chemical can change.

Seventh, EPA is amending 40 CFR 710.26, which appears in the new subpart C as § 710.46(a)(4), to provide a full exemption from IUR reporting for certain forms of natural gas.

Eighth, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to require the reporting of more specific information to assist in the accurate identification of plant sites reporting under IUR.

Ninth, EPA is amending 40 CFR 710.28, 710.32, and 710.33, which appear in the new subpart C as §§ 710.48, 710.52, and 710.53, to change the period for which reporting is required from a corporate fiscal year to a calendar year basis.

Tenth, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to allow submitters to claim their production volume range as CBI, in addition to the existing requirement that submitters report a specific production volume number and the CBI status of that specific number. Under the IURA, some submitters may choose to assert a confidentiality claim for specific production volume information while releasing the more general production volume range as public information.

Eleventh, EPA is amending 40 CFR 710.38, which appears in the new subpart C as § 710.58, to require substantiation of plant site confidentiality claims at the time such claims are made in IUR submissions to EPA (i.e., ''upfront substantiation''), in a manner similar to the upfront substantiation of chemical identity, which will continue to be required under 40 CFR 710.38, which appears in the new subpart C as § 710.58.

Finally, EPA is amending 40 CFR 710.37, which appears in the new subpart C as § 710.57, to extend the records retention period from 4 years to 5 years.

2. *Technical changes to the CFR.* The amendments that are contained in this final rule, as well as the parts of 40 CFR part 710 that are unchanged by these amendments, are codified in a new subpart C in 40 CFR part 710. Because promulgation of IURA will overlap a current IUR reporting cycle, EPA must maintain the existing IUR provisions in 40 CFR part 710 in effect throughout the 2002 submission period for the existing IUR. Submitters filing IUR reports in 2002 must follow the regulations currently contained in 40 CFR part 710, which will now appear under the new heading as subpart B. On January 1, 2003, the regulations in this final rule that are promulgated in subpart C of 40 CFR part 710 will become effective for use by submitters filing IURA reports in 2006 and beyond. (See § 710.1(b) of the regulatory text) Since the Agency has duplicated in subpart C those provisions from subpart B (i.e., the existing part 710) that are unchanged by these

amendments, once the current reporting cycle is complete, subpart B will no longer be applicable and the Agency will issue a technical amendment to remove it from the CFR. The creation of subparts in 40 CFR part 710 does not make any substantive changes other than those that have been presented in this final rule.

Although there are no substantive changes to the provisions from existing 40 CFR part 710 that have been incorporated into the new subpart C, the Agency has made minor technical corrections to those provisions, as well as technical changes to the existing provisions that now appear in subpart A. Specifically, the Agency is correcting several typographical errors that appear in the existing 40 CFR part 710, and is making other minor non–substantive edits to that text. These technical corrections include the following. (Note wherever a change is being made to a new regulatory text provision, a regulatory text citation to the corresponding existing 40 CFR part 710 provision is provided in parentheses, e.g., § 710.59 (§ 710.39). This parenthesized citation is provided in order to identify where the new regulatory text originated.)

In accordance with plain language principles, EPA has substituted ''will'' or ''must'' for ''shall.'' These three terms are considered to be equivalent, and delineate requirements to be followed or met. Corrections were made in the following sections: § 710.1(d) (§ 710.1(c)); § 710.3(a) (§ 710.2(a)); § 710.3(b) (§ 710.2(b)); § 710.3(c) (§ 710.2(c)); § 710.3(d) in the definition for ''Administrator'' (§ 710.2(e)); § 710.3(d) in the definition for ''site'' (§ 710.2(w)); § 710.3(d) in the note following the definition for ''small quantities for research and development'' (§ 710.2(y)); and § 710.4(b)(2) (§ 710.4(b)(2)).

EPA has corrected some punctuation and spelling errors: commas were added in § 710.1(a) (§ 710.1(a)), in § 710.3(d) in the definition for ''distribute in commerce'' (§ 710.2(j)) and in the definition for ''small quantities for research and development'' and in the note following the same definition (§ 710.2(y)); commas were removed in the definition for ''distribute in commerce'' (§ 710.2(j)) and in the note following the definition for ''distribute in commerce'' (§ 710.2(y)); in § 710.3(d) ''Process 'for commercial purposes''' was substituted for ''Process for 'commercial purposes''' in the definition for ''Process 'for commercial purposes''' (§ 710.2(u)); in § 710.3(d) ''juridical'' was substituted for ''juridicial'' in the definition for ''person'' (§ 710.2(s)) and ''appropriate'' was substituted for ''appropriated'' in the definition for ''technically qualified person'' (§ 710.2(aa)(2)); in § 710.4(d)(2) ''premanufacture'' was substituted for ''premanufacturing'' (§ 710.4(d)(2)); and in § 710.4(d)(5) ''photographic films'' was substituted for ''photographic, films'' (§ 710.4(d)(5)).

EPA has made certain additional non–substantive changes. In § 710.3(d), EPA substituted ''1,000 lbs. (454 kg)'' for ''1,000 pounds'' in the note following the definition for ''small quantities for research and development'' (§ 710.2(y)). EPA has substituted ''his/her'' for ''his'' in sections where the word ''his'' was used: in two instances in § 710.3(d) in the definition for ''Administrator'' (§ 710.2(e)); in § 710.3(d) in the definition for importer (§ 710.2(l)(2)); and in § 710.3(d) in the definition for ''technically qualified person'' (§ 710.2(aa)).

EPA has made certain additional non-substantive changes and updated information submission information in § 710.59 by substituting ''Availability of reporting form and instructions'' for ''How do I submit the required information for the 1998 reporting cycle?'' (§ 710.39); in § 710.59(a) by substituting ''http://www.epa.gov/oppt/iur'' for ''http://www.epa.gov/opptintr/iur98'' and by removing ''or Fax-on-Demand by using a faxphone to call (202) 401–0527 and selecting item 5119'' as Fax-on-Demand is no longer available (§ 710.39(a)); in § 710.59(b) by substituting ''Guidance for completing the reporting form and preparing an electronic (magnetic media) report will be made available prior to each submission period.'' for the existing paragraph after the heading (§ 710.39(b)); in § 710.59(c) by substituting ''will send'' for ''is mailing'' and ''reporting package (consisting of a copy of Form U and a copy of the reporting instructions) to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period.'' for ''reporting package to those companies that reported in 1994. '' (§ 710.39(c)); in § 710.59(c)(1), EPA substituted ''By telephone'' for ''By phone'' and removed ''or TDD 202–554–0551'' as the TDD number is no longer available (§ 710.39(c)(1)); in § 710.59(c)(2), EPA substituted ''TSCA-Hotline@epa.gov'' for ''TSCA-Hotline@epamail.epa.gov'' (§ 710.39(c)(2)); and in § 710.59(c) and (d) EPA substituted ''7408M'' for ''7408,'' ''OPPT Document Control Officer (DCO)'' for ''Document Control Officer,'' and ''Environmental Protection Agency'' for ''U.S. Environmental Protection Agency'' (§ 710.39(c)(3)); and by adding § 710.59(c)(4) to state that the reporting form and instructions will additionally be available via the Internet.

EPA has also made minor technical corrections to the existing provisions in § 710.39 that now appear in subpart B. EPA removed ''for the 1998 reporting cycle'' from the section heading to clarify that the section applies to the current reporting cycle. In § 710.39(a), EPA replaced the website address with the current address, www.epa.gov/oppt/iur/iur02/index.htm, and removed the Fax-on-Demand information, which is no longer available. In § 710.39(c)(1), EPA removed the TDD number, which is no longer available. The Agency corrected dates and addresses in § 710.39(c), (c)(3), and (d) by replacing ''1994'' with ''1998,'' ''Mail Code 7408'' with ''Mail Code 7408M,'' and inserting ''OPPT'' before ''Document Control Officer.''

EPA made minor revisions to clarify the meaning of certain provisions. In § 710.1(a) ''and recordkeeping'' was inserted after ''governing reporting,'' ''(TSCA)'' was inserted after ''(15 U.S.C. 2607(a)),'' and ''and keeping current'' was inserted after ''purpose of compiling'' (§ 710.1(a)); in § 710.1(d), the note following the paragraph was added to the end of the paragraph and ''Note: As a matter of traditional Agency policy,'' was removed (§ 710.1(b)); in § 710.52(c)(1) ''submitter'' was substituted for ''respondent'' and ''as described in § 710.59'' for ''from EPA at the address set forth in § 710.39'' (§ 710.32(c)(1)); in § 710.52(c)3(ii) ''indicating, for each reportable chemical substance at each site,'' was substituted for ''for each substance for which information is being submitted indicating'' and added '', or both manufactured in the United States and imported in the United States'' (§ 710.32(c)(5)); in § 710.52(c)(3)(iii) ''designation indicating, for each reportable chemical substance at each site,'' was substituted for ''statement for each substance for which information is being submitted indicating'' (§ 710.32(c)(6)); in §§ 710.45 and 710.55(a) ''submission period'' was substituted for ''reporting period'' (§§ 710.25 and 710.35(a)); in § 710.48 ''section'' was substituted for ''§ 710.28'' (§ 710.28); in § 710.48(b) ''paragraphs (a) and (b)'' were deleted (§ 710.28(c)); in § 710.52(c)(3)(iv) ''reportable'' was substituted for ''subject'' (§ 710.32(c)(7)); in § 710.58(b) ''Chemical identity.'' was added as a section header to more clearly identify the topic of the section, and ''The following steps must be taken to assert'' was substituted for ''To

assert,'' and ''reportable'' was substituted for ''specific'' (§ 710.38(c)(b) and (c)); in § 710.58(b)(1) ''submitter'' was substituted for ''person'' (§ 710.38(c)(1)); in § 710.58(b)(1)(i) ''subpart'' was substituted for ''part'' (§ 710.58(c)(1)(i)); in § 710.58(b)(1)(vi) substituted ''have been taken'' for ''have you taken'' and ''the'' for ''this'' (§ 710.38(c)(1)(vi)); in § 710.58(c)(2) ''listed in paragraph (c)(1) of this section'' was added for clarification purposes, ''submitter'' was substituted for ''person'' and ''clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as 'confidential business information,' 'proprietary,' or 'trade secret.''' was substituted for ''mark that information as 'trade secret,' 'confidential,' or other appropriate designation.'' (§ 710.38(c)(2)); and in § 710.58(d) ''is indicated on the reporting form'' was substituted for ''accompanies information at the time it is'' and ''confidentiality claim substantiation'' was substituted for ''substantiation'' (§ 710.38(d)).

EPA replaced ''manufactured or imported'' with ''manufactured (including imported)'' to provide consistency and clarification. EPA made this change in: § 710.52(c)(3)(iv) (§ 710.32(c)(7)); § 710.58(c)(1)(v) (§ 710.38(c)(1)(v)); § 710.58(c)(1)(vi) (§ 710.38(c)(1)(vi)); § 710.58(c)(1)(vii) (§ 710.38(c)(1)(vii)); § 710.58(c)(1)(viii) (§ 710.38(c)(1)(viii)); § 710.58(c)(1)(x) (§ 710.38(c)(1)(x)); and § 710.48 (§ 710.28).

EPA moved three definitions that currently appear in § 710.2 to § 710.23, to clarify that they apply to the existing IUR. In § 710.3(d), three changes were made in recognition that the definitions are no longer separated into sections, but are contained within paragraph (d): in the § 710.3(d) definition for ''Commerce,'' ''paragraph (1) of this definition'' was substituted for ''paragraph (1) of this section'' (§ 710.2(i)), and in the § 710.3(d) definition for ''Technically qualified individual,'' ''this paragraph'' was substituted for ''paragraph (aa)(3) of this section'' and ''paragraph (1) of this definition'' was substituted for ''paragraph (aa)(1) of this section'' (§ 710.2(aa)(3)).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may promulgate a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making these minor regulatory changes in this final rule without prior notice and opportunity for comment because these minor corrections are non–substantive and do not affect the meaning or legal effect of the provisions affected, which remains the same as it was when the provision appeared in 40 CFR part 710. Thus, notice and public procedure are unnecessary for these minor changes to the existing or new provisions in 40 CFR part 710. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

B. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances in commerce. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial IUR at 40 CFR part 710 (51 FR 21447, June 12, 1986), also under TSCA section 8(a), to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as ''chemical substances'') must maintain such records and submit such information as the Administrator may reasonably require. Under TSCA section 8(a), the Agency may collect information associated with chemical substances to the extent that it is known to or reasonably ascertainable by the submitter. TSCA section 8(a) gives EPA broad discretion in determining the information for which reporting can be required. Some of the types of information which can be required under TSCA section 8(a)(2) include: Categories of use for each chemical substance; estimates of the amount manufactured or processed for each category of use; a description of the byproducts resulting from the manufacture, processing, use, or disposal of each chemical substance; an estimate of the number of individuals exposed in their places of employment; and the duration of such exposure.

TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. The standard for determining whether an entity qualifies as a ''small manufacturer'' for purposes of 40 CFR 710.29, and for 40 CFR part 710 generally, is defined in 40 CFR 704.3. Processors are not currently subject to the regulations at 40 CFR part 710.

This document promulgates the IURA as subpart C in 40 CFR part 710, which includes provisions copied from the existing IUR regulations in 40 CFR part 710 that are not substantively changed as a part of this rulemaking, and the new IURA provisions in this final rule. Failure to comply fully with any provision of this final rule will be a violation of TSCA section 15 and will subject the violator to the penalties of TSCA sections 16 and 17.

C. What is the Inventory Update Rule (IUR)?

The IUR requires U.S. manufacturers of organic chemicals to report to EPA every 4 years the identity of chemical substances manufactured annually during the reporting year in quantities of 10,000 lbs. or more at each plant site they own or control. The current IUR generally excludes several categories of substances from its reporting requirements, i.e., polymers, inorganic substances, microorganisms, and naturally occurring chemical substances. Plant sites subject to the rule are currently required to report information such as company name, plant site location, plant site Dun and Bradstreet number(s), identity of the reportable chemical substance, and production volume of each reportable chemical substance. Data were reported to EPA under the IUR in 1986, 1990, 1994, and 1998, and a collection is occurring in 2002.

The data reported under IUR are used to update the information maintained on the TSCA Inventory, which is a listing of chemical substances in commerce. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities (See Unit II.E. for

further explanation of some of these activities).

D. Why is EPA amending the IUR?

EPA is amending the IUR for three primary reasons: (1) To tailor the chemical substance reporting requirements to more closely match the Agency's information needs; (2) to obtain new and updated information relating to potential exposures to a subset of chemical substances listed on the TSCA Inventory; and (3) to improve the utility of the information reported. These amendments will enhance the information collected through the IUR, improve the scope of chemicals covered by the rule, and improve CBI claims, thereby accomplishing these three goals.

These goals are supported by the policy in section 2(b)(1) of TSCA, that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.'' The data currently available to EPA are generally inadequate for risk screening purposes. TSCA section 8(a)(2) authorizes EPA to require manufacturers and processors of chemical substances to report a wide variety of data, including exposure–related information which will be reported for certain chemical substances under IURA. These amendments remove certain reporting requirements and add others to focus reporting under the IUR on that information which is most needed by EPA and other Federal agencies for screening, assessing, and managing risk. Additionally, the availability of these data will enhance public awareness of basic information about chemical substances.

Any evaluation of potential ''risk'' is generally based on a combination of hazard information and exposure information. EPA relies on risk screening to indicate which chemical substances pose a potential risk to human health or the environment, and thus warrant a more detailed, resource intensive analysis. The EPA Science Advisory Board's report ''Reducing Risk: Setting Priorities and Strategies for Environmental Protection'' (Ref. 1) and the National Academy of Public Administration's report ''Setting Priorities, Getting Results, A New Direction for EPA'' (Ref. 2) recognize that EPA's ability to use risk screening to set priorities and allocate its limited resources has been significantly impeded by a lack of exposure data. The manufacturing, processing, and use of chemicals on the TSCA Inventory result in a wide array of exposure scenarios. The exposure-related data included in IURA will greatly improve EPA's ability to conduct risk screening to identify chemical substances that could pose an unreasonable risk to human health or to the environment, or that otherwise warrant further investigation.

E. What are EPA's TSCA-Related Chemical Screening and Assessment Activities?

TSCA authorizes EPA to gather chemical hazard and exposure data, as well as related information such as production volume, to determine whether a chemical may pose an unreasonable risk of injury to human health or the environment. The Agency is able to institute risk management actions when necessary to mitigate or avoid unreasonable risk. Important elements in a successful chemical risk management program include identifying the chemical substances, manufacturing sites, and exposure scenarios of greatest potential concern, and using that information to set priorities for more detailed risk assessment, further research, advisory notices, or other appropriate actions. To help fulfill its TSCA responsibilities, EPA has established the IUR and other regulations to collect information on commercial chemicals.

The TSCA Inventory currently includes more than 76,000 chemical substances. Approximately 8,900 of these chemical substances are non-polymer, organic chemical substances manufactured at at least one site in quantities of 10,000 lbs. or more per year, as reported under the 1998 IUR data collection. EPA estimates that IURA will continue to collect information on approximately 8,900 chemical substances. However, the set of substances that will be reported under IURA will be somewhat different than the set of substances that was reported under the previous IUR collections primarily because of two changes: Raising the basic reporting threshold (see Unit II.F.2.) and adding reporting on the manufacture of inorganic chemical substances (see Unit II.F.1.a.). Data collected under IURA will enable EPA to more effectively conduct initial risk screening on a subset of the chemical substances within its purview, as described in the remaining part of this section and in Unit III.A.1.

EPA conducted tiered risk evaluations of chemical substances even prior to the enactment of TSCA in 1976. A tiered approach allows EPA to sort through many chemicals, focus on those chemical substances of greatest concern, and take appropriate actions. The Agency is thus able to optimize resources while limiting overall regulatory burdens. The essential steps of the tiered risk evaluation generally include: An initial evaluation (sometimes preceded by a prescreen of candidate chemicals); basic risk management decisions resulting from the initial screening; more detailed risk assessment when appropriate; and resulting risk management actions, such as regulatory or voluntary efforts to reduce risk. Each of these steps is only as effective as the available data inputs--if little data exist to inform the process, each step suffers as a result.

Exposure-related information collected through the IURA will inform the initial risk screening step. Initial risk screening is conducted using readily accessible information from the scientific literature, as well as other data readily available to the Agency, such as those provided by manufacturers and processors. This information set often is incomplete or of insufficient quality to allow the Agency to reach definitive conclusions about the set of chemicals under review, but may be sufficient to decide which chemicals appear to warrant further evaluation, or conversely, appear to be low priority and therefore do not currently warrant further review. These initial reviews are often more qualitative than quantitative. Also, continual updates to these data, such as the recurring reporting of exposure-related data under IURA, will ensure that the most serious concerns will be addressed even as chemical quantities and exposure potentials change between submission periods.

The effectiveness of risk screening, risk assessment, and risk management is dependent upon the quality as well as the availability of both hazard and exposure information. While past approaches to priority setting have emphasized relative chemical hazards and used production volume as a simple surrogate for exposure, EPA must increase its emphasis on the exposure component of risk screening and assessment. EPA no longer believes that reporting under the current IUR is adequate for these purposes. The IURA will provide EPA with data that will more accurately and realistically gauge potential exposures. The exposure-related information reported under IURA will be used in combination with hazard information developed under TSCA section 4 test rules and enforceable consent agreements/orders, through voluntary efforts such as the High Production Volume (HPV) Challenge Program (see www.epa.gov/opptintr/chemrtk/volchall.htm), and

other sources. These more current and complete data from the IURA will allow the Agency and others to screen and prioritize chemicals based on potential risk more effectively than it is currently able to do.

Although the inherent hazard associated with a chemical substance will generally remain the same over time, exposure of workers and affected populations can change significantly. If the amount of a chemical substance produced increases significantly, releases to the environment and human exposures would also be expected to increase. Conversely, if the amount produced remains constant, environmental releases and human exposures may decline as engineering controls are added and pollution prevention practices are implemented. Although the hazard associated with a chemical generally remains constant, the risk associated with the manufacturing, processing, and use of a chemical substance will change as exposure increases or changes. The Agency needs to be able to identify changes in exposures as well as specific exposure scenarios, making it important to collect exposure data on a regular basis. Chemicals that present low hazard may still pose a risk if they are produced in large amounts and have high exposure potential, are released into the environment at high volumes and/or concentrations, or involve exposures to particularly sensitive subpopulations.

A voluntary effort called the Use and Exposure Information Project (UEIP) demonstrated that useful screening level exposure information is available to and can be reported by industry. The UEIP was a cooperative effort begun in the fall of 1992 between government and industry in recognition of the difficulties encountered in obtaining accurate and up-to-date exposure information on HPV TSCA chemicals. Participants included EPA, the Chemical Manufacturers Association (CMA) (now the American Chemistry Council, or ACC), the Chemical Specialty Manufacturers Association (CSMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the American Petroleum Institute (API) (Ref. 3). Data collected by EPA under the UEIP were similar to those now being required under IURA, and included the following: Production volume, site location, percentage of production volume for a given use, environmental releases, number of workers, worker activities, monitoring data, and industrial and consumer uses. EPA's experience with UEIP has shown that the types of data requested by the UEIP are available from industry and can be used to prepare screening level exposure assessments.

The UEIP, however, provided one-time reporting of information by a subset of the manufacturers of a small number of selected HPV chemicals. Given these efforts, the limitations of the data available from past and current information collections that are described in detail in the proposal for these amendments (64 FR 46772, August 26, 1999), and the amount of time it would otherwise take to acquire screening level exposure data for the chemical substances on the TSCA Inventory, it is appropriate to develop a more systematic and broadly applied approach to the prioritization process. The Agency is doing this by requiring that certain basic exposure-related information be reported under this amended rule instead of collecting the information through a one-time voluntary program.

F. What Are the Requirements of IURA?

The regulatory text of this document describes the specific IURA reporting requirements. EPA is also developing a guidance document with specific reporting instructions, and intends to conduct workshops to help potential IURA submitters become familiar with the revised reporting form (Form U) and amended reporting requirements. A draft version of the revised Form U is available in the docket, and EPA intends to develop an electronic version of the revised Form U. EPA will seek additional feedback on the revised form's structure, format, and layout before finalizing it for use in 2006. Submitters should note that the information in § 710.52(c)(1) and (c)(2) of the regulatory text (Part I of the revised Form U) need only be reported once per reporting cycle for each submitter site manufacturing 25,000 lbs. or more of a reportable chemical, while the information in § 710.52(c)(3) and (c)(4) of the regulatory text (Parts II and III of the revised Form U, respectively) will be reported for each reportable chemical at a reporting site, depending upon the chemical's production volume.

1. *What are the changes to the chemical substances covered by IUR*?—a. *Inorganic chemical substances*. EPA is requiring partial reporting for inorganic chemical substances for reporting year 2005 information submitted to EPA during the 2006 submission period, and full reporting for inorganic chemical substances in subsequent submission periods (see § 710.46(b)(3) of the regulatory text). Partial reporting means that the submitter must report the information described in § 710.52(c)(1), (c)(2), and (c)(3), as well as §710.58 of the regulatory text, as applicable (i.e., Parts I and II of revised Form U.). Full reporting means that the submitter must additionally report the processing and use information as described in § 710.52(c)(4) of the regulatory text (i.e., all parts of revised Form U).

EPA intends to screen potential risks associated with inorganic chemical substances to set priorities for testing, more detailed risk assessment and potential risk management. The phasing-in of inorganic chemical reporting provides manufacturers of these chemicals with the opportunity to familiarize themselves with IUR reporting while providing EPA and others with needed basic manufacturing information on inorganic chemicals. Future full reporting of exposure-related information will provide EPA and others with needed additional information for those inorganic chemicals with production volumes of 300,000 lbs. or more at a site. See Unit III.A.1. for a discussion of the importance of this exposure-related information to EPA and others for both organic and inorganic chemicals. Unit III.C.1.a. contains a discussion specific to inorganic chemicals. The basic impetus for collecting information on organic chemicals also holds for inorganic chemicals.

b. *Petroleum process streams*. EPA is exempting certain chemical substances, termed ''petroleum process streams'' for purposes of IURA, from reporting the processing and use data contained in the regulatory text at § 710.52(c)(4). For purposes of this rule, the petroleum process streams included in the exemption are the multi-component complex chemical substances listed by Chemical Abstracts Service (CAS) Registry Number in the regulatory text at § 710.46(b)(1). This list of chemical substances was derived from the 1983 publication of the API entitled ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)'' (Ref. 4). Chemical substances listed in the API document consisting of a single component chemical, except for water, will not be considered petroleum process streams for IURA reporting purposes. Water (CAS number 7732–18–5) is partially exempt from IURA reporting under the petroleum process stream exemption.

The basis for this exemption is not because these streams are of known low toxicity. EPA believes that the chemicals termed ''petroleum process streams'' for purposes of IURA are often toxicologically active. However, these

chemicals are frequently processed at the site where they are produced in vessels which are designed to minimize losses and, coincidentally, the potential for releases and exposure. In many cases, the flammable nature of these products requires that they also be transported, processed, and stored in well controlled vessels. For these reasons, EPA believes worker exposure to the chemicals termed ''petroleum process streams'' for purposes of IURA is diminished and thus full IURA exposure-related reporting is not warranted at this time. Partial IURA reporting includes site location and production volume information which have important uses by EPA and others apart from gauging exposures and risk screening. EPA may take action to revoke this exemption if circumstances warrant.

In the final rule, EPA is making selected changes to the partial exemption list of petroleum process stream chemicals published in the proposed rule. Certain chemicals are being added to the list because they were inadvertently left off the proposed list covered by the exemption. These multi–component chemicals, all of which are listed in the 1983 API publication (Ref. 4), include the following chemical substances (CAS numbers): 8052–41–3, 64742–21–8, 64742–26–3, 64742–94–5, 68476–32–4, 68515–29–7, 68783–12–0, 68918–98–9, 68919– 15–3, 68953–80–0, and 70693–06–0.

In the final rule, EPA is also removing a number of chemicals from the petroleum process stream partial exemption list published in the proposed rule. These chemicals fall into three groups:

(1) Certain chemicals that are already part of the broader natural gas or polymer exemptions. Those already exempted under the natural gas exemption are: 8006–14–2, 8006–61–9, 64741–48–6, 68410–63–9, 68425–31–0, and 68919–39–1. Additionally, an incorrect CAS number 68425–31–1 was corrected to read 68425–31–0, which, again, has been removed from the partial exemption because it is already fully exempt from IUR reporting under the natural gas exemption. Chemicals removed because they are already fully exempt under the polymer exemption are: 64741–71–5, 64741–72–6, 67891–77–4, 67891–78–5, 68131–77–1, 68131–79–3, 68131–80–6, 68131–81–7, 68131–83–9, 68131–99–7, 68132–00–3, 68410–01–5, 68410–10–6, 68410–13–9, 68410–14–0, 68410–16–2, 68410–59–3, 68425–27–4, 68425–28–5, 68476–87–9, 68477–37–2, 68477–43–0, 68477–45–2, 68477–46–3, 68477–50–9, 68477–51–0, 68477–52–1, 68478–07–9, 68478–09–1, 68527–24–2, 68527–25–3, 68783–10–8, 68783–11–9, and 68955–30–6.

(2) Single component chemicals, except for water, should not have been included in the petroleum process streams partial exemption. As stated in the proposed rule, the exemption was intended to include only certain multi–component chemicals derived from the 1983 API publication (Ref. 4). As a result, the following single–component chemicals have been removed from the petroleum process streams partial exemption list as proposed: 8007–45–2 and 10024–97–2.

(3) Certain chemicals that are not included on the TSCA Inventory and therefore are not currently reportable under IUR have also been removed from the exemption list: 64741–93–1, 64741–94–2, 64742–00– 3, 64742–02–5, 64742–17–2, 64742–66–1, 64742–74–1, 64742–84–3, and 64754–96–7.

In this final rule, EPA is also making some additional corrections to the petroleum process streams partial exemption list published in the proposed rule.

(1) Incorrect CAS numbers for certain chemicals were provided in the proposed rule. These CAS numbers were incorrect because of typographical errors in the proposed rule. The correct CAS numbers (incorrect CAS numbers are in parentheses) are as follows: 8006–20–0 (8006–20–2), 64742–18–3 (64742–18–2), 64742–20–7 (64742–20–3), 68187–60–0 (68187–60–9), 68459–78–9 (68459–79–8), 68513–14–4 (68514–14–4), 68513–19–9 (68512–19–9), and 68514–38–5 (68514–38–4). Two additional incorrect CAS numbers were provided in the proposed rule, i.e., 64742–36–2 and 68741–41–9. The corrected CAS numbers for these chemicals, i.e., 64742–36–5 and 64741–41–9 respectively, were also provided in the proposed rule.

(2) Several duplicate CAS numbers that were included in the proposed rule have been removed.

(3) CAS numbers for certain chemicals have been superceded by new CAS numbers. The new CAS numbers are as follows (superceded CAS numbers are in parenthesis): 68187–58–6 (68334–31–6), 68410–13–9 (68477–56–5), 68308–08–7 (68478–21–7), 68334–30–5 (68512–90–3), 68918–99–0 (68513–26–8), 64742–83–2 (6851–30–7), 68988–79–4 (68515–31–1), 64742–93–4 (68516–21–2), 68606–10–0 (68606–35–9), and 64742–93–4 (68650–78–2).

c. *Natural gas.* EPA is exempting certain forms of natural gas from IUR reporting. These substances are listed in the regulatory text at § 710.46(a)(4). EPA believes that, to date, adequate IUR information has been collected on these chemical substances to fulfill EPA's and other IUR information users' current needs. EPA will take action to revoke this exemption if circumstances warrant in the future.

d. *Specific chemical substances.* EPA is exempting certain specific chemical substances for which EPA has determined that there is a low current interest in the IURA processing and use information from reporting the processing and use information contained in the regulatory text at § 710.52(c)(4). These chemicals are still subject to the other requirements of IURA. The chemical substances included in this partial exemption are listed by CAS Number in the regulatory text at § 710.46(b)(2)(iv). EPA is also establishing a process for revising the list of exempted chemical substances over time.

EPA is establishing this partial exemption in an effort to improve IURA's efficiency and effectiveness. This partial exemption also provides additional benefits in reducing the potential reporting burden of IURA for certain manufacturers of these chemicals, and provides an efficient process for amending the partial exemption list as the need for processing and use information under IURA changes over time. The inclusion of a chemical substance under this partial exemption is not based on the potential risks of a chemical. This partial exemption is solely intended to provide a tool to assist the Agency in better managing the collection of processing and use information under IURA.

In the proposed rule, EPA specifically sought comment on a partial reporting exemption for ''low priority'' chemicals, and requested comment on the criteria the Agency might use to establish such an exemption, as well as the specific chemicals that might qualify for such an exemption. (See Unit IX.3. of the preamble to the proposal, at 64 FR 46794). EPA also offered several approaches for identifying the chemicals that could be considered for such an exemption. A number of commenters supported the creation of a partial exemption, and several provided suggestions for additional chemical substances or classes of substances that they wanted EPA to consider including in this or an expanded partial exemption.

In response to the comments received, EPA has established a partial exemption that applies when EPA has determined that there is a low current interest in the chemical's IURA processing and use information. Because IURA reporting is

chemical-specific, this exemption applies to the specific chemical substances that are listed within the exemption, which are discussed in more detail below. The need for EPA's collection of IURA processing and use information related to a particular chemical substance can change over time; therefore, EPA has also established a process that will allow EPA to revise the list by adding or removing a chemical to reflect the change in interest. The process allows anyone to submit a written request for EPA to consider revising the list of chemical substances covered under this partial exemption. EPA may also revise the list on its own initiative. When a list revision is necessary, EPA's preferred approach will be to issue a direct final rule, which affords an opportunity for public comment, while providing an efficient mechanism for revising the list.

In determining whether there is low current interest in IURA processing and use information related to a specific chemical substance, EPA will look to the specific circumstances surrounding the chemical in question, and may use one or more of the considerations identified below, and/or considerations not identified below, to make an informed decision. EPA will consider the totality of information available for the chemical substance, including but not limited to the following:

(A) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in § 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

It is important to note that the inclusion of these chemical substances under this partial exemption is not based on the potential risks of the chemicals, but is based on the Agency's current assessment of the need for collecting IURA processing and use information. Additionally, some of these chemicals have issues that may renew interest in them in the future, at which time EPA will reconsider the applicability of this partial exemption for those chemicals.

To create an initial list of specific chemical substances covered by this partial exemption, EPA started with:

(1) The list of chemical substances identified as part of the HPV Challenge Program for which, based upon a preliminary review of known hazard information, it was determined that the SIDS data set would not further our understanding of the chemical's properties.

(2) The list of the chemical substances that the European Union (EU) exempted from its reporting requirements for existing chemical substances.

(3) Certain other chemicals identified during the Executive Order 12866 interagency review, for which EPA was able to quickly determine, based on a review of their chemical structures, properties, existing hazard information, and available exposure information, that IURA processing and use information is of low current interest.

This list was then adjusted based upon the totality of information available to EPA during the Executive Order 12866 interagency review period to ensure that the chemicals included in this partial exemption were those for which EPA determined that IURA processing and use information is of low current interest. EPA chose these chemicals because almost all previously underwent a review to have gotten on these lists and, considering the time available during the Executive Order 12866 interagency review, the Agency was able to utilize these lists, along with the Agency's current knowledge and understanding of the individual chemical's structure, properties, indications of hazards and potential exposures, to inform its determination that there is a low current interest in IURA processing and use information for these specific chemicals (Ref. 5). As indicated previously, EPA has established a process for revising the list of chemicals covered by this partial exemption, and intends to reconsider the chemicals identified in comments for applicability under this partial exemption.

The list currently consists of the following chemicals:

(1) Chemicals for which it had been determined that the SIDS data set would not further our understanding of the chemical's properties, and not otherwise sponsored under the HPV Challenge Program: 50–70–4, 50–99–7, 56–87–1, 57–50–1, 59–02–9, 69–65–8, 124–38–9, 142–47–2, 1592–23–0, 7440–44–0, 8001–21–6, 8001–22–7, 8001–26–1, 8001–29–4, 8001–30–7, 8001–31–8, 8001–78–3, 8001–79–4, 8002–03–7, 8002–75–3, 8006–54–0, 8016–28–2, 8016–70–4, 8021–99–6, 8029–43–4, 9050–36–6, 16291–96–6, 61789–97–7, 61789–99–9, 64147–40–6, 64755–01–7, 65996–63–6, 65996–64–7, 68188–81–8, 68334– 00–9, 68334–28–1, 68409–76–7, 68425–17–2, 68439–86–1, 68476–78–8, 68514–27–2, 68514–74–9, 68525–87–1, 68918–42–3, 68952–94–3, 68989–98–0, and 73138–67–7.

(2) Chemicals from the EU Existing Chemicals Program exempted list that are not currently otherwise a part of another Agency program such as the HPV Challenge Program: 50–81–7, 58–95–7, 59–51–8, 87–79–6, 123–94–4, 137–08–6, 150–30–1, 1317–65–3, 7440–37–1, 7727–37–9, 7782–42–5, 8001–23–8, 8002–13–9, 8002–43–5, 9004–53–9, 9005–25–8, 11103–57–4, 26836–47–5, 61789–44–4, 67701–01–3, 68002–85–7, 68131–37–3, 68308–54–3, 68424–45–3, and 68424–61–3.

(3) Chemicals otherwise identified by EPA based on consideration of the chemical's structure, properties, existing hazard information, and available information concerning the extent of exposure, and which are not currently a part of another Agency program such as the HPV Challenge Program: 1333–74–0, 7782–44–7, 68442–69–3, 68648–86–2, 68648–87–3, 129813–58–7, 129813–59–8 and 129813–60–1.

You may use the process established in § 710.46(b)(2) to submit a request for the Agency to consider other chemical substances for inclusion under this partial exemption. Please ensure that you provide sufficient information in your requests to enable EPA to make the necessary determination after considering the totality of available information. If you have any questions about this process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT** for additional assistance.

Under the list revision process, EPA will provide a written response to requests within 120 days of receipt, and will maintain copies of these responses in a public docket that will be established for each reporting cycle. In order to assist the Agency in completing any necessary revision to the list before the reporting period, any request for revising the list of chemicals under this partial exemption must be received by the Agency no later than January 1 of the year before the reporting period in question (i.e.,12 months prior to the reporting period). For example, any request for inclusion under this partial exemption must be submitted to EPA no later than January 1, 2004, i.e., 12 months prior to the next reporting

period, which begins on January 1, 2005, for the 2006 submission period. If the request is submitted after this date, during an actual reporting period, or during the submission period, EPA is less likely to have sufficient time to complete its evaluation and make a determination, or issue the necessary rulemaking such that the decision can be effective for that submission period. Submitters should check the **Federal Register** for list revisions or may check the electronic CFR to identify what chemicals are on the partial exemption list prior to each reporting period.

EPA intends to develop a standard operating procedure (SOP) for this specific chemical partial exemption process, which will outline the process steps, as well as provide guidance to EPA personnel on making such determinations. EPA would like to seek your input during the development of this SOP, as well as feedback on the implementation of this process, as part of IURA implementation workshops that are planned.

One of the purposes of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, can be achieved through federal agencies working together with the affected industries to design surveys that will achieve multiple purposes with a single survey instrument. EPA plans to identify and initiate dialogue that has the potential for generating additional paperwork burden reductions for the IURA. For example, the current USGS annual survey covers approximately 80 minerals, and accounts for at least 75% of the industrial production and 75% of the facilities included in the USGS survey. If you have identified other federal agency information collections that could satisfy the IURA purposes, or for which IURA information might serve as a viable substitute and have the potential to generate federal paperwork burden reductions, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the agency has obtained approval for the activity from the Office of Management and Budget (OMB), an approval which must be renewed every 3 years. As part of the PRA approval renewal process, which includes an opportunity for public review and comment prior to OMB review, EPA intends to continue to evaluate this exemption process and will provide information about the chemicals evaluated, requests received, decisions made and related process elements and experiences as part of the information collection request (ICR) submitted to OMB. The Agency will also analyze the information collected from one reporting year to the next, in order to ensure that IURA information collection activities continue to meet the requirements of the PRA, including the demonstration of practical utility.

e. *Polymers*. As a result of recent inquiries regarding the exemption of polymers from IUR reporting, EPA is clarifying this existing exemption. The exemption does not apply to a polymeric substance that has been hydrolyzed, depolymerized, or otherwise chemically modified, except in cases where the intended product of this reaction is totally polymeric in structure. The Agency's intent under the exemption at 40 CFR 710.26(b) has always been (and continues to be under 40 CFR 710.46(a)(1)) that the products of such reactions carried out on polymeric materials are excluded from IUR reporting only if they are intended to have a totally polymeric composition. There is no change in the IUR status of polymeric materials that have not undergone such reactions and are flagged in the TSCA Inventory.

f. *Microorganisms*. EPA is clarifying this existing definition to ensure that the definition used for IURA purposes is consistent with the microorganisms rule at 40 CFR part 725 and to clarify the status of chemicals produced from living microorganisms.

2. *How have the reporting thresholds changed*? EPA is raising the basic IUR reporting threshold from a production volume of 10,000 lbs. per year per site to 25,000 lbs. per year per site. Every person manufacturing a non–excluded chemical substance at or above the threshold will be required to report the information in Parts I and II of the revised Form U (see the regulatory text at §§ 710.52(c)(1), (c)(2), and (c)(3) and 710.58). The increased IUR reporting threshold makes the IUR and Toxics Release Inventory (TRI) reporting thresholds equivalent for manufacturers. These thresholds also approximate the current TSCA section 5 premanufacture notification (PMN) low volume exemption threshold of 10,000 kg (approximately 22,000 lbs.). EPA is raising the basic IUR reporting threshold in order to reduce the number of reports filed, thus reducing the overall industry burden associated with this regulation. The new reporting threshold does not represent a finding of low exposure or low risk.

EPA is also instituting a second, higher production volume threshold of 300,000 lbs. per year per site. Persons who manufacture a reportable chemical substance at or above this level will be required to report the information in Part III of the revised Form U (see § 710.52(c)(4) of the regulatory text) in addition to the information in Parts I and II of the revised Form U. The information reported on Part III of the form relates to the processing and use of chemical substances. EPA is instituting this separate threshold to limit processing and use data reporting to a subset of a few thousand IUR reportable chemicals out of the approximately 76,000 chemicals listed on the TSCA Inventory.

Information concerning lower production volume chemical substances is valuable, especially for identifying trends and additional substitute chemicals. However, wherever possible, the Agency has attempted to limit the reporting burden. In the future, EPA may find it necessary to collect information on chemicals at reporting thresholds below the thresholds introduced in this action. Although both the 25,000 lbs. and 300,000 lbs. thresholds are significantly higher than the current IUR 10,000 lbs. threshold, the enhanced information that will be gathered under the amended rule will enable the Agency and others to more efficiently identify those chemical substances warranting further, more in–depth review, as well as chemicals of lesser concern (see Ref. 6).

3. *Have the reporting year, the submission period, or the reporting frequency changed*? In order to provide clarification, two new definitions are being added at 40 CFR 710.43: ''reporting year'' means the calendar year in which information to be reported to EPA during a submission period is generated and ''submission period'' means the period in which the information generated during the reporting year is submitted to EPA. ''Submission period'' replaces the term ''reporting period,'' as used under the current IUR regulations at 40 CFR part 710.

As proposed, EPA is changing the IUR reporting year to a calendar year basis from a corporate fiscal year basis. This change standardizes reporting time frames across IUR submitters and across various other reporting programs, such as the TRI program.

Under the current IUR regulations at 40 CFR 710.33(b), submitters are required to report on a recurring basis during a 120–day period from August to December (the ''submission period'' under IURA) every 4 years. In a separate action following this final rule, EPA intends to change the submission period to occur earlier in the year, for example from January 1 through May 1. This potential change is related in part to the

reporting year change in this final rule from fiscal year to calendar year. The August to December submission period was originally used because many companies' fiscal years end in July, and starting the IUR submission period in late August allowed these companies to report their most current information. Companies will now report on a calendar year basis, making an earlier submission period more appropriate. Changing the submission period to occur earlier in the year would allow sites to submit their information closer to the period during which it was generated, as well as allow the Agency to obtain the information early in the year, thereby increasing the timeliness of the availability of the data.

In this final rule, EPA has not changed the reporting frequency (every 4 years), although EPA did consider alternative reporting frequencies (see the ''Revised Economic Analysis for the Amended Inventory Update Rule,'' Ref. 7). This means that the first reporting year for IURA information will be 4 years after the reporting year under the existing IUR, i.e., existing IUR reporting year is 2001, so the first reporting year under IURA will be 2005. The submission period will continue to occur in the year following the reporting year, i.e., existing IUR submission period is in 2002, so the first submission period for IURA will be in 2006.

The final rule indicates that subsequent reporting years and submission periods will occur every 4 years. In a separate action following this final rule, however, EPA intends to change the reporting frequency after the first reporting year under IURA (i.e., 2005, with submission to EPA in 2006) from every 4 years to every 5 years. This would mean that, instead of occurring in 2009, the second reporting year under IURA would be 2010 (i.e., 5 years after 2005), and would then occur every 5 years thereafter. The submission period would continue to occur in the year following the reporting year, so it too would occur every 5 years (i.e., 2011, 2016, etc.). In making this change, EPA also intends to change the recordkeeping period from 5 years to 6 years. EPA agreed to make these changes within the next 12 months as part of the interagency review under Executive Order 12866 in an effort to further reduce the potential reporting burden related to IURA. EPA estimates that a 5–year frequency would save regulated entities about $50 million over 20 years at a 3% discount rate (about a 16% reduction), and $37 million over 20 years at a 7% discount rate, and would still meet EPA's most critical data needs (Ref. 8).

For the first reporting year under IURA, EPA intends to issue guidance and conduct workshops to help the regulated community become familiarized with the revised regulations. A draft copy of the guidance for the 2006 submission period can be found in the docket for this rulemaking (Ref. 9).

4. *How have the recordkeeping requirements changed*? EPA is requiring that persons subject to reporting under IURA retain records that document any information reported to EPA under IURA for a period of 5 years beginning with the effective date of that submission period (see § 710.57 of the regulatory text). The effective date of the submission period is the last day of the submission period (currently December 23, although EPA intends to change this date, see Unit II.F.3.) in a year in which data must be submitted to EPA under IURA. Previously, submitters were required to retain records for 4 years (see 40 CFR 710.37). Under IURA, if a person submits a report in the year 2006, that person will retain the records on which the report is based until December 23, 2011. This change ensures that the submitter will have the previous submission available when determining future reporting. The change will also aid in EPA's enforcement of IUR by requiring that submitters maintain records that span successive submission periods. As described in Unit II.F.3., in a separate action EPA intends to change the reporting frequency from every 4 years to every 5 years. In that action, EPA also intends to change the recordkeeping period from 5 years to 6 years in order to continue to span successive submission periods. A 6–year recordkeeping period would require, under IURA, that if a person submits a report in the year 2006, that person will retain the records on which the report is based until December 23, 2012.

Persons who are not required to report under the existing IUR because they manufacture less than the 10,000 lb. reporting threshold have been required to retain volume records as evidence to support decisions not to submit a report. In this rulemaking, EPA is eliminating this provision because EPA believes that this type of information is routinely retained by companies in the normal course of business.

5. *How have the data elements reported by all submitters changed*? The new and revised data elements to be reported under the amended rule are discussed in this section. Data elements that are currently reported under IUR but that are not revised by these amendments are not generally discussed in this document.

a. *Technical contact identification (§ 710.52(c)(2)(i) of the regulatory text)*. In addition to the name of a person who will serve as technical contact for the submitter company, the parent company name, the contact person's full mailing address, and the contact person's telephone number, submitters must report the contact person's e–mail address and the parent company Dun and Bradstreet Number. The technical contact person must be able to answer questions about the information on the revised Form U that is submitted by the company to EPA.

b. *Plant site identification (§ 710.52(c)(2)(ii) of the regulatory text)*. Submitters must report the plant site county or parish in addition to the information currently required for each plant site that is subject to reporting.

EPA had additionally proposed to require submitters to report a plant site identification number in order to clearly identify the reporting site in a way that would allow the cross–linking of IUR information with information reported about the same plant site contained in other data bases. EPA specifically proposed requiring the reporting of a newly assigned Facility Registration Identifier (FRI), or, if the Facility Registry System were not yet in place in time for the publication of this final rule, the submitter would report the site's RCRA number, if one has been assigned to the site. In this final rule, EPA has decided not to require the submission of a site identification number in addition to the Dun and Bradstreet number that submitters must continue to report. The Agency may instead make number assignments either directly on the reporting form after it is submitted to EPA, or prior to mailing out the form at the beginning of a submission period. Submitters will not be responsible for obtaining or reporting this number.

c. *Chemical identification (§ 710.52(c)(3)(i) of the regulatory text)*. Submitters must indicate which type of chemical identifying number they are reporting, in addition to the number itself. EPA no longer allows the use of certain of the previously used substitute identifying numbers (such as EPA–assigned numbers for Test Market Exemption Applications, original TSCA Inventory form numbers, and numbers associated with Notices of *Bona Fide* Intent to Manufacture) because they are difficult to cross–reference to CAS Registry numbers. Submitters must report a CAS Registry number, or, if a CAS Registry Number is not known to the submitter, the submitter must report

either an EPA–designated accession number for confidential substances or a PMN case number.

d. *Confidentiality of production volume range (§ 710.52(c)(3)(v) of the regulatory text).* Submitters must continue to report the specific production volume of the reportable chemical and may claim CBI protection for that production volume. Additionally, submitters may claim as CBI a pre–determined production volume range corresponding to the reported production volume number. This claim, if needed, would be separate from a CBI claim for the specific production volume.

Submitters of specific CBI production volume data may allow the release of more general range information. EPA expects that roughly 50% of submitters of specific CBI production volume data will allow the public release of volume ranges. This expectation of reduced CBI claims is based on the CBI claim statistics associated with the development of the original TSCA Inventory (See ''Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information'' (Ref. 10)) as well as comments received from industry concerning potential TSCA CBI reforms (Ref. 11). The range option will allow the public greater access to data on chemical production volumes, and the Agency will be better equipped to publicly release more aggregate production volume data relevant to its risk screening and other decisions.

The production volume ranges in the final rule are 25,000 to 300,000 lbs.; 300,000 to 1,000,000 lbs.; 1,000,000 to 10,000,000 lbs.; 10,000,000 to 50,000,000 lbs.; 50,000,000 to 100,000,000 lbs.; 100,000,000 to 500,000,000 lbs.; 500,000,000 to 1,000,000,000 lbs.; and greater than 1,000,000,000 lbs. per year. These ranges are similar to those first used in the development of the original TSCA Inventory, except for one change, i.e., the lowest range starts at the IURA reporting threshold of 25,000 lbs. rather than the 10,000 lb. threshold that was used in the current IUR. EPA additionally made one change to the ranges included in the proposed rule, i.e, the upper end of the first range and the lower end of the second range were raised to 300,000 lbs. from the 100,000 lbs. range limit included in the proposal, resulting in ranges of 25,000 – 300,000 lbs. and 300,000 – 1,000,000 lbs. This change makes the ranges consistent with the second reporting threshold of 300,000 lbs. or more (see § 710.52(c)(4) of the regulatory text), and provides additional protection for submitters' production volume range CBI claims.

Under the proposed rule's 100,000 lbs. range limit for the lowest production volume range, submitters who did not claim the production volume range as CBI might have inadvertently provided the public with more information than they intended. For instance, for a submitter whose production volume was in the 100,000 to 1,000,000 lbs. range, who did not claim their production volume range CBI, and who did not report any information in Part III of reporting Form U (the industrial processing and use and the commercial and consumer use information), public users of the data would be able to infer that the submitter's production was somewhere between 100,000 to 300,000 lbs. per year – information which the submitter might have considered CBI. To protect against such inadvertent disclosures of CBI, EPA changed the production volume ranges to reflect the second reporting threshold of 300,000 lbs. EPA does not believe that the change significantly affects the utility of the data to the public.

e. *Number of potentially exposed workers (§ 710.52(c)(3)(vi) of the regulatory text).* Submitters must report the range code that corresponds to their estimate of the total number of workers reasonably likely to be exposed to each reportable chemical substance at each plant site. EPA defines ''reasonably likely to be exposed'' as an exposure to a chemical substance which, under foreseeable conditions of manufacture, processing, distribution in commerce, or use of the chemical substance, is more likely to occur than to not occur. Such exposures would normally include, but not be limited to, exposure during activities such as charging reactor vessels; drumming; bulk loading; cleaning equipment; maintenance operations; materials handling and transfers; and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), but exclude accidental or theoretical exposures.

Workers involved in chemical manufacturing, processing, and use are a subpopulation of concern to EPA, the Occupational Safety and Health Administration (OSHA) (Ref. 12), the National Institute of Occupational Safety and Health (NIOSH) (Ref. 13), and other organizations (e.g., labor unions). Workers may often be exposed to chemical substances in higher doses and with greater frequency than the general population, and may therefore be at potentially greater risk of adverse health effects. The number of workers reasonably likely to be exposed to specific chemical substances is important to EPA and other organizations in developing screening level exposure scenarios. These scenarios are then used to develop priorities for testing, more detailed risk assessment, and risk management.

Under IURA, submitters are required to use ranges rather than specific values for reporting certain data, including the number of workers reasonably likely to be exposed and the number of processing or use sites. The ranges for reporting the estimated number of potentially exposed workers are found in § 710.52(c)(3)(vi) of the regulatory text. In general, reporting these ranges reduces the potential burden to submitters of developing a precise point estimate for the data element. The use of ranges should additionally result in fewer CBI claims than if precise point estimates were provided because ranges tend to reveal less sensitive information than specific estimates while still conveying sufficient information useful to effectively screen chemical risks. Submitters are permitted to claim the reported ranges as confidential if revealing even this general information would disclose information of a sensitive nature.

f. *Maximum concentration (§ 710.52(c)(3)(vii) of the regulatory text).* Submitters must report the maximum concentration, measured by weight, of the reportable chemical substance at the time it leaves the submitter's manufacturing site or, if it is a site-limited chemical, at the time it is reacted on-site to produce a different chemical substance. This information is to be reported regardless of the various physical forms in which the chemical may be sent off-site or reacted on–site. Concentration ranges for use in reporting are found in § 710.52(c)(3)(vii) of the regulatory text.

Concentration is an important variable to consider when estimating the magnitude of potential exposures. Information about the maximum concentration of a chemical substance present at processing and use sites is frequently used in chemical risk screening in the review of PMNs for new chemical substances required by section 5 of TSCA and is used to the extent it is available in screening chemicals on the TSCA Inventory. For example, EPA has developed standard methods to estimate dermal exposures that workers may experience while performing common industrial operations such as sampling and loading chemicals into drums. These

standard methods use maximum concentration information to estimate upper limits to exposure estimates. If EPA is aware that a chemical substance is processed or used only as a fraction of a mixture with other chemical substances, exposure estimates may be adjusted downward accordingly. For example, a chemical substance which is a component of a liquid mixture exerts a lower vapor pressure than it would as a pure chemical substance. Because higher vapor pressure is associated with increasing inhalation exposure to a chemical substance, the concentration of a chemical substance in a liquid mixture impacts the exposure assessment.

A chemical may be produced in multiple physical forms and in multiple formulations and products. As described in Unit II.F.5.g., EPA is requiring reporting of each of the physical forms in which a chemical is sent off–site. For the purpose of exposure screening, EPA is requiring only the reporting of the maximum concentration, regardless of the various physical forms in which a chemical may be sent off-site.

EPA had proposed that submitters also report the average concentration of the chemical when leaving the manufacturing site (at 64 FR 46788). EPA is not promulgating this requirement because of the potential difficulty of determining the average concentration. For example, a submitter could produce many formulations containing a particular chemical substance, making a determination of average concentration difficult.

g. *Physical form (§ 710.52(c)(3)(viii) of the regulatory text)*. Submitters must report the physical form(s) of the chemical at the time it leaves the site of manufacture or, if the chemical is site-limited, at the time it is reacted on site to produce a different chemical substance. The list of physical forms from which submitters must select is found in § 710.52(c)(3)(viii) of the regulatory text. Further discussion on physical form reporting is found in Unit III.B.1.a.

The physical form of a chemical is an important factor to consider when estimating magnitudes and concentrations of potential exposures. EPA's analyses of TRI and PMN data demonstrated that the physical state of a chemical is a determining factor in predicting the potential for industrial releases of chemicals, and hence, exposures to humans and the environment. The results of the analyses are provided in a technical support document that was developed by EPA in support of this rule (''Inventory Update Rule (IUR) Amendments Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' Ref. 14). The physical state, which provides information on volatility and how the chemical is likely to be handled during manufacturing, processing, and use, is an important data element for the purpose of exposure and risk screening.

h. *Percent production volume (§ 710.52(c)(3)(ix) of the regulatory text)*. Submitters are required to report the percentage of total production volume (as reported under regulatory text § 710.52(c)(3)(iv)) of the reportable chemical substance that is associated with each physical form reported. Percent production volume estimates will allow the Agency to aggregate, on a case-by-case basis, the production volume of a particular physical form for a given chemical across multiple sites. These determinations will allow EPA to better characterize the risk associated with chemicals that are manufactured in physical forms that typically result in higher exposures, such as volatile liquids or powders, but that are produced in small quantities. These percent production volume estimates will help put the physical form information into context. Estimates must be rounded off to the nearest 10% of production volume.

6. *What new definitions have been added to explain or reworded to clarify the reporting requirements*? EPA has reorganized the definition section of the regulatory text associated with the original Inventory and IUR. There are now three definition sections. The existing § 710.2 contains definitions relevant primarily to the compilation of the original Inventory, although a few of these definitions are also relevant to both IUR and IURA. EPA has recodified these general definitions in § 710.3. Definitions relevant only to IUR, which were originally in § 710.2, are now in § 710.23. Section 710.43 contains definitions relevant only to IURA. This reorganization clarifies the relationships between the definitions and the various rules, and has no substantive effect.

Two existing definitions are being clarified (§ 710.3 of the regulatory text). EPA defines ''manufacture'' to mean to manufacture, produce, or import for commercial purposes and ''manufacture or import 'for commercial purposes''' to mean to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture: (1) For commercial distribution, including for test marketing, or (2) for use by the manufacturer, including use for product research and development, or as an intermediate.

Certain new definitions are being added to § 710.43 as a result of this final rule.

a. *Known to or reasonably ascertainable by*. TSCA section 8(a)(2) authorizes EPA to require persons to report information that is known to or reasonably ascertainable by the submitter. For the purposes of reporting under IURA, a submitter will report information described in the regulatory text at § 710.52(c)(1), (c)(2), and (c)(3) that is known to or reasonably ascertainable by the submitter. This means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

b. *Readily obtainable information*. TSCA section 8(a)(2) authorizes EPA to require persons to report information that is known to or reasonably ascertainable by the submitter. Under IURA, a submitter will report processing and use information (i.e., the information reported for sites at which the 300,000 lbs. threshold has been met or exceeded) only to the extent that such information is ''readily obtainable'' by the submitter's management and supervisory employees responsible for manufacturing, processing, distributing, technical services, and marketing of the reportable chemical substance (see regulatory text § 710.43). Extensive file searches are not required. The ''readily obtainable'' standard for processing and use information requires less effort on the part of the submitter than the ''known to or reasonably ascertainable by'' standard that applies to all other IUR reporting (see regulatory text § 710.43), while providing sufficiently precise processing and use information for screening level reviews. In addition, the ''readily obtainable'' standard limits the reporting burden associated with processing and use reporting and is identical to the standard currently in effect under EPA's TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) (See 40 CFR 712.7). The ''readily obtainable'' definition is further discussed in Unit III.D.2.

c. *Reasonably likely to be exposed*. For the purposes of reporting under IURA, reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would

normally include, but would not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, etc.), but excludes accidental or theoretical exposures.

d. *Use*. For the purpose of reporting under IURA, EPA is defining ''use'' as any utilization of a chemical substance or mixture that is not otherwise covered by the terms ''manufacture'' or ''process'' (see regulatory text § 710.43). For example, the activity of processing a solvent into a paint formulation is considered ''processing'' rather than ''use'' because the activity incorporates the chemical substance (the solvent) into a formulation. If the paint formulation containing the solvent is then applied to a metal or wood surface (e.g., cars), this application would be considered a use activity. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging occurs does not constitute use or processing of the chemical substance or mixture.

e. *Repackaging*. For the purpose of reporting under IURA, ''repackaging'' is defined as the physical transfer of a chemical substance or mixture (as is) from one container to another container or containers in preparation for distributing the chemical substance or mixture in commerce. This definition does not apply to sites that only relabel or redistribute the reportable chemical substance without removing the chemical substance from the container in which it is received or purchased.

f. *Industrial use*. EPA defines ''industrial use'' for purposes of reporting under IURA as use at a site at which one or more chemical substances or mixtures are manufactured or processed (see § 710.43 of the regulatory text).

g. *Commercial and consumer use*. For purposes of reporting under IURA, EPA defines ''commercial use'' as the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or a service, such as painting contractors using paint products. A ''consumer use,'' on the other hand, means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, a school, or recreational areas (see § 710.43 of the regulatory text). Exposures to commercial and consumer products are similar for risk screening purposes because existing screening level assessment methods are not sophisticated enough to distinguish between these exposures.

h. *Intended for use by children*. For purposes of reporting under IURA, EPA defines ''intended for use by children'' as the use of a chemical substance or mixture in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers ''yes'' to at least one of the following questions for the product into which the submitter's chemical substance or mixture is incorporated: (1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger; (2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger; or (3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

i. *Reportable chemical substance*. For the purposes of reporting under IURA, a reportable chemical substance is a chemical substance described in § 710.45 of the regulatory text.

j. *Reporting year*. For the purposes of reporting under IURA, the reporting year is the calendar year in which information to be reported to EPA during a submission period is generated, i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter. For instance, for information submitted in 2006, the information will be generated during the period from January 1 to December 31, 2005.

k. *Submission period*. For the purposes of reporting under IURA, the submission period is the period in which the information generated during the reporting year is submitted to EPA. For instance information generated during the period from January 1 to December 31, 2005 (i.e., when the chemical substance is manufactured) will be submitted during the 2006 submission period.

l. Site-limited. For purposes of reporting under IURA, EPA defines ''site-limited'' to mean that a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited. Although a site-limited chemical substance is not distributed for commercial purposes outside the site at which it is manufactured and processed, the substance is considered to have been manufactured and processed for commercial purposes.

7. *What new data elements are reportable by only larger production volume manufacturers*? As described in Unit II.F.2., EPA is replacing the current IUR reporting threshold of 10,000 lbs. per year per site with two new production volume reporting thresholds of 25,000 lbs. and 300,000 lbs. per year per site. Each person manufacturing a reportable substance at or above the 25,000 lbs. per year per site threshold is required to complete at least a partial report containing the information in Parts I and II of the revised Form U. Persons who manufacture a reportable substance at or above the 300,000 lbs. per year per site threshold are required to complete a full report, providing the information in Part III of the revised Form U in addition to the information in Parts I and II. Part III concerns the processing and use of chemical substances.

a. *Processing and use information (§ 710.52(c)(4) of the regulatory text)*. Submitters with plant sites at which a reportable chemical substance is manufactured in annual quantities of 300,000 lbs. or more must report processing and use information under IURA. EPA requires submitters to report the information described in § 710.52(c)(4) of the regulatory text concerning the processing and use of each reportable chemical substance at sites that receive a reportable chemical substance from the submitter site either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), whether the recipient site(s) are controlled by the submitter site or not. Processing and use information must be reported only to the extent that the data, or an estimate, is ''readily obtainable'' by the submitter (see Unit II.F.6.b.).

i. *Industrial processing or use operations (§ 710.52(c)(4)(i)(A) of the regulatory text)*. Submitters must report the industrial processing or use operation(s) at each site that receives the reportable substance from the submitter site (whether the recipient site(s) are controlled by the submitter site or not). The categories for reporting are listed in § 710.52(c)(4)(i)(A) of the regulatory text.

ii. *North American Industrial Classification System (NAICS) Code (§ 710.52(c)(4)(i)(B) of the regulatory text)*. Submitters must report the five–digit NAICS code(s) that best describe(s) the industrial processing or use activities at the sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor,

from a customer of the submitter, etc.), whether the recipient site(s) are controlled by the submitter site or not. The NAICS codes, published by the Office of Management and Budget (OMB), have superseded the prior system of Standard Industrial Classification (SIC) codes (Ref. 15). Submitters must report these codes to the extent the information is readily obtainable for processing or use activities at sites that process or use a reportable chemical substance received from the submitter. EPA does not intend for manufacturers to survey their customers or distributors to precisely identify the appropriate NAICS codes at their downstream sites.

The NAICS classification system is being used in IURA to describe the industrial setting in which chemical exposures associated with the industrial processing or use of a chemical substance may occur. Exposure to a chemical substance typically varies among industries. The NAICS code in conjunction with the Industrial Function Category (IFC) code and the processing or use operation will define the industrial, commercial, or consumer setting so that the appropriate scenarios can be applied to estimate worker, community, and environmental exposures to the chemical substance.

The NAICS codes which best describe the industrial activities associated with each reported industrial processing or use operation must be provided. If more than 10 NAICS codes apply to a reportable chemical substance, submitters need only report the 10 NAICS code, IFC and processing or use operation combinations that cumulatively represent the largest percentage of the substance's production volume, measured by weight. Submitters may also report the same NAICS code multiple times if the chemical being reported has several industrial functions or multiple processing or use operations. This limitation on reporting is intended to minimize submitters' reporting burden.

iii. *Industrial function category (IFC) (§ 710.52(c)(4)(i)(C) of the regulatory text).* Submitters must report the IFCs that best represent the specific manner in which a chemical substance is used within each NAICS code reported. Submitters may report the same function category under different NAICS codes. The IFCs to be used are listed in the regulatory text at § 710.52(c)(4)(i)(C).

A NAICS code and IFC combination sufficiently defines a potential exposure scenario for risk screening and priority–setting purposes. EPA conducted studies to determine whether information regarding the industrial sectors in which a chemical substance is processed and used, and information regarding the function a chemical substance performs within industrial processes, are useful for the purpose of screening level exposure assessments. These studies demonstrated that this type of information provides indications of the route, magnitude, and concentration of potential chemical exposures to humans and to the environment. The results of the studies are provided in two of the technical support documents that EPA developed in support of this rule (Refs. 14 and 16).

IFCs are also useful in estimating the frequency and duration of chemical substance exposures by indicating the type of application in which a chemical will be used (e.g., solvents (for cleaning and degreasing) or intermediate). The relationship between industrial function categories and the frequency and duration of exposure to chemical substances is particularly useful in developing exposure assessments in EPA's New Chemicals Program. These data elements are important elements in developing useful exposure scenarios. In the absence of these data, EPA often uses conservative estimates that may indicate a greater risk than is actually the case. Data that will be obtained under IURA will enable EPA to make more realistic characterizations of exposure, instead of ''worst case'' assumptions.

iv. *Percentage of production volume attributable to each combination of NAICS code and industrial function category in each processing or use operation (§ 710.52(c)(4)(i)(D) of the regulatory text).* Submitters must estimate the percentage of total production volume attributable to each reported combination of NAICS code and IFC in each processing or use operation, to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. Submitters are not permitted to round off to zero percent if the production volume attributable to a NAICS code/IFC/processing or use operation combination is 300,000 lbs. or more and accounts for 5% or less of the total production volume of a reportable chemical substance. In such cases, submitters must report the percentage of production volume attributable to that combination to the nearest 1% of production volume. This exception to the general rounding rule will ensure that adequate use information is reported for the larger production volume chemical substances.

The total percent production volumes associated with the NAICS code/IFC combinations may add up to more than 100%, given that the submitter is reporting on distribution of a chemical to sites in its control as well as downstream sites, some of which are not immediate purchasers from the original manufacturing site. Additionally, the total percent production volume may add up to less than 100% if the submitter cannot readily obtain information about how all of its production volume is processed or used by industry.

v. *Number of processing or use sites (§ 710.52(c)(4)(i)(E) of the regulatory text).* Submitters must report estimates of the total number of industrial sites, including those beyond the submitter's control, that process or use each reportable chemical substance manufactured by the submitter, with respect to each combination of NAICS code and IFC in each processing or use operation. The ranges that will be used for reporting the number of sites can be found at § 710.52(c)(4)(i)(E) of the regulatory text. For risk screening purposes, the number of sites at which chemical substances are manufactured, processed, or used is a useful indicator of the number of ecosystems and the size of the general population potentially exposed to the chemical substances.

vi. *Number of workers (§ 710.52(c)(4)(i)(F) of the regulatory text).* Submitters must report estimates of the total number of workers, including those at sites not under the submitter's control, that are reasonably likely to be exposed while processing or using the reportable chemical substance, with respect to each combination of NAICS code and IFC in each processing or use operation. The approximate number of workers will be reported using the same definitions and ranges described under Unit II.F.5.e. The difference in reporting worker exposure information under this section is that such information need be reported only to the extent that it is readily obtainable.

b. *Commercial and consumer use information (§ 710.52(c)(4)(ii) of the regulatory text).* Submitters must report information concerning the commercial and consumer uses of each reportable chemical substance, whether the site(s) at which the chemical substance is used are controlled by the submitter site or not. As for the industrial processing and use information described in Unit II.F.7.a., commercial and consumer use information must be reported only by sites at which a chemical substance is manufactured in annual quantities of 300,000 lbs. or more, and submitters are only required to report the information to the extent that it is readily obtainable.

Consumers comprise a subpopulation of particular concern to EPA, the Consumer Products Safety Commission (CPSC), and other governmental and non–governmental organizations. Information from submitters about whether the chemical substances they manufacture are used in consumer products is useful in estimating the potential risks to consumers that result from chemical exposures. In the absence of more specific data, EPA often assumes for risk screening purposes that large, unprotected populations may potentially be exposed to the chemical substances in consumer products. EPA is also working with industry and other stakeholders to develop hazard, exposure, and risk assessments regarding chemicals to which children are exposed. The commercial and consumer product information that will be reported under IURA will be used by EPA in the identification of chemicals that might be included in these programs, and may contribute to exposure assessments for these chemicals.

i. *Commercial and consumer product categories (§ 710.52(c)(4)(ii)(A) of the regulatory text)*. Submitters must report up to 10 categories that best describe the commercial and consumer products in which the reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). If more than 10 categories apply, submitters need only report the 10 categories for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume, measured by weight. The commercial and consumer product (CCP) categories are listed at § 710.52(c)(4)(ii)(A) of the regulatory text. Information on the use of chemicals in CCPs is useful in estimating the frequency and duration of chemical substance exposures. In the absence of other information, consumers are often assumed to experience less controlled, but less frequent exposures than workers. The data that will be obtained under IURA will enable EPA to make more realistic characterizations of exposure, instead of ''worst case,'' overly conservative assumptions.

ii. *Products intended for use by children (§ 710.52(c)(4)(ii)(B) of the regulatory text)*. Submitters must indicate, within each reported CCP category, whether, based on readily obtainable information, any amount of each reportable chemical substance manufactured by the submitter is or is not present in (for example, a plasticizer chemical used to make pacifiers) or on (for example, as a component in the paint on a toy) any products intended for use by children, regardless of the concentration of the substance, or indicate that such information is not readily obtainable.

EPA defines ''intended for use by children'' in § 710.43 of the regulatory text and in Unit II.F.6.h. Using this definition, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in or on a product that is intended to be used by children age 14 or younger, the submitter would indicate this on Form U. For example, EPA believes that certain products, like crayons, coloring books, diapers, and toy cars – to name a few – are typically intended to be used by children age 14 or younger. As such, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in crayons and toy cars, that submitter would report a ''Y'' in the Children's Use column on Form U for categories C01 and C10.

On the other hand, EPA believes that certain products, like household cleaning products, automotive products, and lubricants--to name a few--are typically not intended to be used by children age 14 or younger. As such, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in automotive care products and lubricants, that submitter could report a ''N'' in the Children's Use column on Form U for categories C03 and C09.

For further illustration, some examples of products that are typically intended for use by children 14 or younger are provided for each commercial and consumer use category (this listing is not intended to be exhaustive and should therefore not be considered limiting):

Code	Category	Examples of Children's Products
C01	Artists' supplies	Crayons, children's markers
C02	Adhesives and sealants	Craft glue, model glue
C03	Automotive care products	Typically products in this category are not likely to be intended for use by children 14 or younger
C04	Electrical and electronic products	Electronic games, remote control cars, toys
C05	Glass and ceramic products	Porcelain dolls
C06	Fabrics, textiles and apparel	Pajamas
C07	Lawn and garden products (non-pesticidal)	Lawn and gardening tools designed specifically for children, e.g., children's rake
C08	Leather products	Shoes, jackets, baseball gloves
C09	Lubricants, greases and fuel additives	Typically products in this category are not likely to be intended for use by children 14 or younger
C10	Metal products	Toy trucks, toy cars, wagon
C11	Paper products	Diapers, baby wipes, coloring books
C12	Paints and coatings	Finger paints, water color kits intended for children's use

Code	Category	Examples of Children's Products
C13	Photographic chemicals	Typically products in this category are not likely to be intended for use by children 14 or younger
C14	Polishes and sanitation goods	Typically products in this category are not likely to be intended for use by children 14 or younger
C15	Rubber and plastic products	Pacifiers, action figures, balls
C16	Soaps and detergents	Baby shampoo, children's bubble bath
C17	Transportation products	Child's car seat
C18	Wood and wood furniture	Baby cribs, changing tables, wooden toys
C19	Other	Other items specifically intended for use by children age 14 or younger

EPA chose the phrase ''intended for use by children'' because it appears in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) and has been applied by the Consumer Product Safety Commission (CPSC) for over 20 years. While not specifically defined in FHSA or its implementing regulations, the CPSC regulations list several factors that CPSC considers in determining whether a product is a ''children's product'' intended for use by children (16 CFR 1501.2(b)). After consultation with CPSC, EPA adapted these factors for the purpose of defining ''intended for use by children'' for IURA purposes.

EPA based the ages for the definition, i.e., 14 or younger, on the Standard Consumer Safety Specification on Toy Safety issued by the American Society for Testing and Materials (ASTM), Standard: ASTM F963–96a. This standard covers age groups through 14 years and defines ''toy'' as: ''any object designed, manufactured, or marketed as a plaything for children through the age of 14 years'' (Ref. 17, section 3.1.33).

Obtaining information indicating that a chemical substance or mixture is used in a product that is intended for use by children will enable the Agency and others to identify chemicals affecting this particularly sensitive population. EPA has long had an interest in protecting children from unreasonable adverse affects associated with exposure to chemicals. In 1995, EPA established a policy to ensure that environmental health risks of children are explicitly and consistently evaluated in our risk assessments, risk characterizations, and environmental and public health standards (see http://yosemite.epa.gov/ochp/ochpweb.nsf/homepage). Environmental health threats to children are often difficult to recognize and assess because of limited information to identify where children's exposures occur and limited understanding of when and why children's exposures and responses are different from those of adults.

In 1997, Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), specifically directed each Federal agency to make it a high priority to identify, assess, and address children's environmental health and safety risks. It also created a Task Force on Environmental Health Risks and Safety Risks to Children. On October 9, 2001, President Bush signed Executive Order 13229, entitled *Amendment to Executive Order 13045, Extending the Task Force on Environmental Health Risks and Safety Risks to Children* (66 FR 52013, October 11, 2001), extending the work of the Task Force by another 18 months. These Executive Orders illustrate the interest in and the importance placed on addressing children's environmental health and safety risks.

The inclusion of the children's use category in IURA will provide the Agency and others with valuable information about the relationship between the IUR chemicals and products intended for use by children 14 or younger. This information will allow the Agency to respond to concerns about chemicals used in the manufacture of products intended for use by children, enabling the Agency to identify those chemicals that are reported as not being used in children's products, those chemicals that are used in children's products, and those chemicals where it is not known if they are used in children's products. This initial screen will then allow EPA and others to identify those chemicals used in children's products that might warrant further investigation or assessment, and thereby allow EPA, as well as other interested parties and affected entities, to better prioritize such assessments and maximize available resources.

iii. *Percentage of production volume attributable to each commercial and consumer product category (§ 710.52(c)(4)(ii)(C) of the regulatory text).* Submitters must estimate the percentage of their site production volume for each reportable chemical substance that is attributable to each specific commercial and consumer end–use. This information must be submitted to the extent that it is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, a CCP category which accounts for 5% or less of the total production volume of a reportable chemical substance cannot be rounded off to zero percent if the production volume attributable to that CCP category is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that CCP category to the nearest 1% of production volume. This exception to the general rounding rule will ensure that adequate use information is reported for the larger production volume chemical substances.

The total percent production volumes reported may add up to more than 100%, given that the submitter is reporting on distribution of a chemical to sites in its control as well as downstream sites, some of which are not immediate purchasers from the original manufacturing site. Additionally, the total percent production volume may add up to less than 100% if the submitter cannot readily obtain information about how all of its production volume is used in commercial and consumer products.

iv. *Maximum concentration in commercial and consumer products (§ 710.52(c)(4)(ii)(D) of the regulatory text).* Submitters must report the maximum concentration (measured by weight) of each reportable chemical substance in each commercial and consumer product category. In complying with this requirement, submitters will select from the list of concentration ranges provided in § 710.52(c)(3)(vii) in the regulatory text. Concentration is further discussed in Unit III.B.1.b. As with the other processing and use information that submitters must report, such information will be reported only to the extent that it is readily obtainable by the submitter.

8. *What changes have been made to requirements for making CBI claims*? Submitters are able to claim information submitted to EPA under this amended rule as confidential if they have reason to believe that release of the information would reveal trade secrets or confidential commercial or financial information, as provided by section 14 of TSCA and 40 CFR part 2. Claims of confidentiality must be asserted at the time information is submitted to EPA. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, subpart B. EPA strongly encourages submitters to review confidentiality claims carefully to ensure that the information in question falls within the protection of TSCA section 14, and to limit invalid confidentiality claims as much as possible.

Submitters will have an opportunity to make CBI claims for most of the information reported under IURA. To claim information as confidential, a submitter must check the appropriate box and sign the certification statement on the reporting form. If a submitter fails to do so, EPA could release the information to the public without further notice to the submitter. As in the past TSCA Inventory Update collections and the initial TSCA Inventory collection, by signing the certification statement the submitter certifies that its claims of confidentiality are true and correct. Procedures for claiming information submitted electronically (such as a submission on diskette) as CBI will be specified in the instruction manual that will be available each submission period as described in § 710.59 of the regulatory text. CBI should not be submitted by e–mail. A discussion about CBI claims under IURA is provided in this unit.

a. *Upfront substantiation for plant site identity*. Submitters are required to provide upfront substantiation for CBI claims for plant site identity, in a manner similar to the upfront substantiation of chemical identity under the existing IUR (see 40 CFR 710.38). Under IURA (see § 710.58(d) of the regulatory text), a submitter may assert a claim of confidentiality for a plant site identity if the submitter believes that releasing that identity would reveal trade secrets or confidential commercial or financial information, as provided by TSCA section 14. Submitters in past IUR information collections have claimed in excess of 15% of plant site identities as CBI. While the Agency does not question the occasional need for this claim, it believes that these claims should be limited to only those circumstances in which it is necessary. Further discussion on upfront substantiation is found in Unit III.E.2.

In order to assert a claim of confidentiality for a plant site identity under this amended rule, the submitter must check the appropriate box on the reporting form indicating a confidentiality claim for plant site identity and substantiate the claim in writing by answering certain questions provided in § 710.58(d) of the regulatory text. If a submitter fails to substantiate the plant site CBI claim, EPA could make the information available to the public without further notice to the submitter.

b. *CBI claims for chemical production volume information.* EPA did not change the ability of the submitter to assert a claim of confidentiality for production volume information if the release of that information would reveal trade secrets or confidential commercial or financial information as provided by section 14 of TSCA. However, submitters may now make separate CBI claims for both actual plant site production volume information and a corresponding production volume range. Production volume ranges are similar to those used in the implementation of the original TSCA Inventory collection and can be found at § 710.52(c)(3)(v) of the regulatory text.

In the last four IUR submission periods when EPA sought actual production volume information, approximately 65% of the information was claimed as confidential. In contrast, only 35% of production volume data collected in ranges in the original TSCA inventory collection were claimed as confidential. This difference indicates that submitters may be significantly less likely to make CBI claims for production volume information reported in ranges than for discrete production volume figures. The high proportion of CBI claims in IUR reports has severely limited EPA's ability to convey production volume information to the public, even in the form of a national aggregate production volume for the chemical. EPA needs to be able to convey production volume information to the public to explain its chemical risk assessment and risk management decisions. Effective communication of this information is vital to EPA's overall mission. EPA has added the ability to claim production volume range information CBI in an effort to address this problem. In some cases, submitters may choose to claim their actual production volume as CBI, while allowing the more general production volume range to be made public.

III. Public Comments

EPA carefully considered the comments it received on the proposed IURA. Major comments are discussed below. Additional comment summaries and more detailed responses are contained in the ''Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments'' (Ref. 18).

A. General Comments

1. *How will EPA and others use the new exposure-related data collected under these amendments*? Several commenters expressed the view that EPA has not provided adequate justification supporting the Agency's need for the new IUR data, nor enough specific examples showing how EPA would use the data for its intended purpose.

EPA has an obligation under TSCA to protect human health and the environment from unreasonable risks associated with chemicals under its jurisdiction. In order to evaluate potential chemical risks, EPA has determined that a portion of the chemicals (both inorganic and organic) on the TSCA Inventory currently warrant the collection of manufacturing information, and that a subset of those chemicals (i.e., those produced in annual quantities of 300,000 lbs. or more at a site) currently warrant the collection of supplementary processing and use information. EPA is amending the IUR to provide an accurate and readily available source of basic exposure-related information for approximately 4,000 of the 76,000 substances listed on the TSCA Inventory. The amendments significantly limit industry's reporting burden while providing EPA with information needed to screen for risks to human health and the environment.

EPA's primary use of these data will be to identify priority TSCA chemicals for more detailed information gathering, risk assessment, and risk management in order to develop targeted programs, allowing the Agency to be proactive in protecting human health and the environment. Screening chemical risks generally requires a combination of both hazard and exposure information. The lack of exposure-related data beyond production volume data in the current IUR has severely limited the usefulness of the current IUR data for risk screening. Moreover, the exposure-related data that will be collected under IURA are not otherwise readily available from publicly available data sources (see Unit III.A.3.). This lack of exposure-related data has made it difficult for EPA and others to identify chemicals with potential exposures of concern, and has resulted in the generation of overly conservative screening level exposure assessments.

The addition of manufacturing, processing and use exposure-related data to IURA, especially when compiled by EPA into a searchable data base format, will enable EPA and others to more readily screen chemicals for exposure and risk. These reviews will allow for better prioritization of chemicals to identify those warranting more detailed assessments and to eliminate chemicals of lesser concern from further review.

Data generated by IURA will be used in a wide variety of programs fundamental to fulfilling the Agency's TSCA statutory mandate. These programs range from the more traditional existing chemicals risk screening efforts, to voluntary programs such as EPA's Design for the Environment program (see http://www.epa.gov/opptintr/dfe), to individual requests for analysis of chemicals not associated with a particular program. The IURA data base will be searched to identify chemicals or use scenarios meeting specific criteria. For instance, the data base could be searched to identify chemicals that, based upon these data, have the greatest potential for consumer exposure, creating a list of chemicals arranged according to the production volumes associated with different consumer uses. Additional examples of uses for IURA data are provided in this section and in EPA's ''IURA Data Use Plan'' (Ref. 19). The Agency anticipates that, as was true even for the basic production data reported under the existing IUR, new uses of IURA data by EPA and by others will continually emerge and cannot be predicted at this time.

Results from EPA tools such as the Use Cluster Scoring System (UCSS) will be greatly improved by IURA data. The UCSS is a computerized tool that combines hazard and exposure information from a variety of data sources, analyzes the data in relation to groupings by commercial use, or ''clusters,'' and identifies clusters of potential concern to EPA. EPA's Science Advisory Board (SAB) commented in its evaluation of the UCSS that the lack of exposure information in the system has impaired its usefulness (Ref. 20). The IURA data base will provide exposure information that the UCSS will be able to download directly and use. (For a description of UCSS, see V.B.6. of the proposed rule at 64 FR 46780 or www.epa.gov/oppt/cahp/actlocal/use.html)

EPA will also use IURA data to perform preliminary exposure and risk screening across a portion of the TSCA Inventory chemicals. Some of the same types of data that will be collected under IURA have been collected under the Agency's TSCA Existing and New Chemicals Programs and have aided EPA in performing exposure and risk screening. These exposure-related data were submitted as part of programs such as: The voluntary UEIP (see http://www.epa.gov/opptintr/exposure/docs/ueip.htm for a description of this project) and the PMN program under TSCA section 5. Although the UEIP and PMN programs involve the submission of certain data that are the same as or similar to data being submitted under IURA, these programs cannot sufficiently serve the needs that IURA will serve (see Units V.A.1. and V.B.5. of the proposed rule at 64 FR 46775 and 46780). However, these programs are examples of the usefulness of certain IURA data elements.

For example, several IURA data elements were used in an Existing Chemicals Program initial review of the chemical methyl ethyl ketoxime (MEKO). This review relied in part upon data submitted by industry under the UEIP. Some of the data are similar to those that will be reported under IURA and include the following: Production volume, manufacturing process, industry sector, industrial processing/use activity, functional use, number of sites, number of workers, physical/chemical properties, and consumer product information. Other UEIP information submitted by industry on MEKO are not of the sort that will be collected under IURA, such as environmental releases (releases to air, water, etc.), worker exposure activities, and monitoring data. The IURA is designed to obtain information that is the most critical for generating screening level exposure profiles.

The UEIP submissions for MEKO indicated that there were one manufacturer and two importers of MEKO in 1993 and five primary end uses (submissions provided percentages of MEKO production and import volumes devoted to each use). The submissions also reported the number of workers at the manufacturing site, the physical forms of products containing MEKO, and the MEKO weight fraction in each use.

The MEKO use information was combined with information from available workplace monitoring studies and modeling approaches to compile a screening level workplace exposure assessment. The UEIP information on use provided crucial information to allow EPA to postulate process operations, worker activities, and possible exposures. For example, MEKO's primary use (92% of production and import volume) is as a paint additive. This fact allows EPA to refer to information on paint manufacturing and use to estimate exposures to workers who either formulate paints or apply the paints using spray guns or other techniques. MEKO use in paint indicates a potential for exposure to several large populations (workers and consumers) because exposure to even small amounts of paint can result in significant exposure levels to chemicals in paints. Such use information can also be used by EPA to generate estimated numbers of workers in very small businesses (< 10 workers) that may be poorly represented by existing National Occupation Exposure Survey (NOES) data. In the MEKO case, such a population would be commercial painters. Without the information about MEKO use in paints and the large percentage of MEKO volume devoted to this use, exposed populations and exposure level estimates may have been severely underestimated or left as a data gap (not estimated). Such underestimations and data gaps can artificially lower the appropriate level of concern for potential risk(s) from a chemical.

The usefulness of IURA data elements is also demonstrated by EPA's use of similar data in its New Chemicals Program. PMNs for new chemical substances submitted to EPA under TSCA section 5 require many of the same exposure-related data elements that will be reported under IURA. Exposure-related data in PMNs include estimates of production volume, categories of use, percent production volume in the categories of use, maximum number of workers exposed,

and concentrations and physical forms of the chemical. EPA uses these exposure-related data to generate screening level risk assessments for regulatory decision-making under TSCA section 5.

The manufacturer of a new chemical provided the following information in a recent PMN submission: An estimated import volume; chemical uses and the percentages of the import volume devoted to each use (non-cosmetic applications as a component of a fragrance formulation used in household products such as detergents, cleaners, soaps, room fresheners, etc.); number of sites and workers; and consumer product information (weight percent in products). EPA used this information in combination with technical references and other data to estimate the number of manufacturers of household products who may use the new substance. Releases of the new substance as a result of the fragrance formulation process and from manufacturers of the household products were estimated, resulting in estimated environmental concentrations of the new substance due to its release and estimated general population exposures to the new substance. EPA also used the information on processing and use in combination with modeling techniques to estimate the number of workers and consumers who may be exposed to the new substance and their estimated exposures to the new substance. These exposure-related estimates, when combined with information on the estimated hazards of the new substance, indicated that the estimated risks to potentially-exposed workers, the general population, consumers, and aquatic species were all below levels of concern. Therefore, the Agency could determine that no further regulation under TSCA section 5 was needed for this new substance. In contrast, without this information, EPA would have had to rely on generic assumptions for approximating potential exposures. These types of assumptions are intended to be conservative in nature and therefore often result in higher than likely exposure estimates.

Information from the IURA may also be used in efforts to identify single chemicals to support potential exposure prevention activities. For example, EPA recently learned that certain imports of zinc sulfate were contaminated with cadmium. Using the IURA processing and use data on inorganic substances, EPA could have quickly identified importers of zinc sulfate and segments of industry or the general population that might use the chemical. EPA then could have targeted warnings of the potential for exposure to cadmium more effectively, thereby preventing exposures to the groups likely to be the most highly exposed.

Other Federal agencies have also long recognized the need for and importance of exposure data. OSHA, NIOSH, and CPSC have written letters supporting EPA's and their own need for exposure data (Refs. 12, 13, 21, 22, and 23). In May 2000, the Government Accounting Office (GAO) stated that ''Various federal agencies have collected such human exposure data for a number of purposes; historically, these collection efforts have been limited to selected chemicals, subpopulations, and time periods'' (Ref. 24).

Other government agencies, industry, public interest groups, and the public in general will be able to access and use the non-CBI portion of IURA information. The IURA exposure-related data will be important to users beyond those who accessed the existing IUR in the past solely for production volume information. The Natural Resources Defense Council (NRDC), for example, has expressed interest in using IURA information (Ref. 25). In another case, persons interested in reviewing the HPV Challenge Program screening level hazard data (see http://www.epa.gov/opptintr/chemrtk/volchall.htm) will be able to use the non-CBI exposure-related IURA data to put the hazard data into context. Risks identified via evaluation of these screening level hazard and exposure data then can be addressed.

Although EPA can envision a wide variety of uses for the new IURA exposure-related information as described in this section, the Agency anticipates that even more opportunities exist for use of this information, as is true for the basic production data reported under the current IUR.

2. *What is the practical utility of the new exposure-related data*? Commenters have questioned whether the data collected as a part of this rulemaking will have ''practical utility.'' Practical utility is defined in the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3502(11)) to mean ''the ability of an Agency to use information, particularly the capability to process such information in a timely and useful fashion.'' The OMB regulatory definition of ''practical utility'' at 5 CFR part 1320.3(l) addresses not only the theoretical or potential usefulness of information to an Agency, but also its actual usefulness, taking into account its accuracy, validity, adequacy, and reliability, the Agency's ability to process the information in a useful and timely fashion, and whether the Agency demonstrates actual timely use of the data by the Agency's own functions. The following discussion addresses commenters' concerns in two parts: First, the accuracy, validity, adequacy, and reliability of the data; and second, the timely use of the data by EPA.

a. *How has the Agency ensured that the data will be accurate, valid, adequate, and reliable*? Commenters asserted that the data EPA proposed to collect through IURA would not be adequate for the purposes stated by EPA, and would not be accurate, valid, or reliable. Commenters stated that the information collected through IURA would be of limited accuracy and would be inferior to data the Agency has collected in other programs. Commenters also stated that the information would be so uncertain that it would not be useful to predict chemical risk, and that there are so many other factors that affect exposure, such as engineering controls, that the data would provide a limited and potentially inaccurate view of potential exposure. Additionally, commenters asserted that they do not know how their chemicals are used downstream of the manufacturing site, therefore if they were required to report such information, the resulting data would be unreliable.

EPA considered the types of information needed for screening level exposure and risk assessments and believes the information that will be collected through IURA will have the necessary level of accuracy, validity, adequacy, and reliability for such assessments. EPA agrees that there are many ways to increase the accuracy, validity, and reliability of the data. However, in developing IURA and considering various alternatives, EPA relied on experience from programs such as TSCA's PMN program and the UEIP data collection, and maintained a balance between data needs for exposure screening and priority setting and the burden associated with providing the information. If the Agency had required very precise, specific reporting, submitter burden would have increased beyond that which is appropriate for a screening level data collection. EPA also agrees that there are many factors that can affect exposure potential; however, the data provided by the submitters will provide baseline information sufficient for an initial screen of exposure potential.

i. *Adequacy of the data*. Before proposing the IURA, EPA analyzed various exposure data collections and assessments to determine the data elements needed for a screening level exposure assessment. This discussion

and analysis are in the document ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening'' (Ref. 14). Commenters' suggestions on the proposed rule implied that more extensive information about exposures than was included in the proposed rule would be necessary for even a screening level analysis of potential exposure. One commenter stated that there are many other factors that can significantly affect the potential for exposure. These factors include engineering controls and personal protective equipment practices, the nature of the activities in which workers are engaged, and the physicochemical characteristics of the chemical substances. This commenter also stated that the data collected under IURA will provide a limited and potentially inaccurate view of potential exposure. However, as summarized in Unit III.A.1., risk analyses performed by the Agency in general and OPPT in particular are graduated and data-driven. As the initial levels of concern and the quantity and quality of data increase, the need for methodologies used in risk review become more detailed and exacting, and the reviews become more accurate and reliable. Based on its experience screening chemical risks through such programs as the TSCA New Chemicals Program, the Agency believes IURA data will provide information adequate to perform initial screens of chemicals. The Agency also will be better able to prioritize and make basic risk management decisions about those chemicals of greatest concern as indicated by the available data. These better informed decisions will enhance confidence that the most appropriate chemicals are selected for more detailed assessments.

ii. *Accuracy and reliability of the data*. The Agency considered the data accuracy and reliability needed for screening level exposure analyses, and took several steps to ensure IURA data meet those needs. Screening level data need not be absolutely precise, but should be accurate and reliable enough to make usable and defensible technical assessments. The IURA will supply exposure-related information the Agency currently does not have, recognizing that industry has a greater knowledge than EPA about its own operations and the uses of chemicals it manufactures and sells. Without this information, EPA either would not screen these chemicals, would screen them using outdated or anecdotal exposure information, or would rely on exposure estimates (typically conservative) using modeling data.

Commenters stated that the accuracy and reliability of much of the information reported in Part III of the proposed revised Form U (§ 710.32(c)(4) of the proposed regulatory text, now § 710.52(c)(4)) would be highly questionable because it relates to sites, activities, and products that are not under the direct or indirect control of the reporting company. Industry programs such as the ACC's Responsible Care Program (see http://www.americanchemistry.com for more information) require that, as part of the program, member companies work with customers, carriers, suppliers, distributors, and contractors to foster the safe use, transport and disposal of chemicals. The Responsible Care Program, coupled with basic marketing and sales force activities, suggests that many companies are well informed about downstream uses of their chemicals. EPA recognizes that submitters may not always have detailed information about how the chemical(s) they make are used. As a result, submitters will only be required to report this information to the extent it is ''readily obtainable'' (see Unit II.F.6.b.). In addition, the Agency believes, based on its experience with the New Chemicals Program, the UEIP, stakeholder meetings, discussions with industry about voluntary risk management programs, and industry's various self-regulation initiatives, that most submitters have at least some basic information about downstream uses, such as the information that will be reported under the IURA. These data are believed to be of sufficient reliability for use by the Agency and others for purposes such as screening level risk assessments and prioritization.

EPA also requires much of the IURA information to be submitted in EPA specified ranges. This requirement benefits both the Agency and submitters. First, range reporting is less burdensome for the submitter than calculating specific numeric estimates. Demanding greater data accuracy increases the burdens associated with data collection. Second, information reported in discrete numeric values can indicate a level of accuracy that is not necessarily present. EPA believes that a higher level of confidence in data accuracy can be achieved by specifying ranges.

Commenters suggested that EPA use other methods to obtain processing and use information, such as voluntary data collection programs. However, voluntary industry efforts are not uniformly reliable for collecting data, and the Agency generally cannot ensure that data submitted under voluntary efforts will be complete and accurate. For example, the UEIP was undertaken by EPA in partnership with industry to collect relatively detailed information on 60 high production volume chemicals. EPA received data for 48 of the 60 UEIP chemicals. Many of the forms received for those 48 chemicals were not completely filled out, and only a subset of manufacturers submitted data. Thus, while the information that EPA received was quite useful, it was insufficiently complete for the purposes to which IURA information will be put. EPA's experience with UEIP is an indicator that exposure data collected under a voluntary effort are likely to be uneven and fall short of meeting EPA's needs.

iii. *Validity of the data*. Another commenter had specific concerns about the validity of the worker exposure data and felt that an auditing program would be necessary to generally ensure an acceptable level of quality for data collected under IURA.

EPA agrees that validated exposure data are the most useful for the full range of Agency risk assessment activities. However, EPA's experience with similar data collection efforts such as TSCA's New Chemicals Program demonstrates that the type of data EPA is collecting under IURA are sufficient for the purpose of screening to prioritize follow-on efforts for risk assessment and management. A rigorous validation process for all IURA exposure-related information would impose significant additional burdens on industry and the Agency that would likely outweigh the benefits accruing to the screening process. As discussed in Unit III.A.1., EPA exposure and risk evaluations are often iterative, with screening level assessments succeeded by more intensive and data rich assessments, as indicated by the screening level assessments and as data become available. The IURA data will be useful to the Agency in evaluating potential exposures and risks, serving as indicators as to what levels and types of exposures from which chemicals need further review.

b. *Will the Agency use the data in a timely manner*? Many commenters questioned whether EPA would be able to make effective and timely use of IURA processing and use information, stating that the large amount of data submitted would overwhelm the Agency. EPA acknowledges that IURA will generate a significant quantity of new data that EPA has not handled under past IUR data collections. However, EPA has carefully designed

the data collection to facilitate efficient data management and use. Data collected through IURA will be put into a relational data base format, which can be easily searched, compared, and used. The collection of data organized by codes, rather than narrative information presented in an unstructured manner, lends itself to such a data base format. In addition, providing for electronic IURA submissions allows data to be entered into the data base more accurately and expeditiously, resulting in a quick turnaround between the submission of the data to the Agency and the availability of the data for use. The Agency anticipates that approximately 95% of all reports will be submitted electronically or on disks, as opposed to hard copies. This compares with 70% that were submitted on disks in 1998. The IURA will facilitate EPA's information management and the data will be available quickly for the Agency's and others' use.

3. *Why doesn't EPA use other available sources of data or mechanisms to collect the data sought under IURA*? EPA requested comments on specific mechanisms or data sources it could use to obtain needed exposure-related information with greater ease and less burden to industry. Commenters responded with a variety of sources, ranging from current data collection mechanisms within EPA (such as TSCA 8(a) PAIR, UEIP, and cooperative approaches) to public data sources such as the Hazardous Substances Data Bank (HSDB) (HSDB is a toxicology data file on the National Library of Medicine's (NLM) Toxicology Data Network (TOXNET)). In addition, many commenters stated that EPA has not made effective use of the exposure-related data it has collected already under current or prior programs. For example, they stated that data collected under two other TSCA rules - the PAIR and the Comprehensive Assessment Information Rule (CAIR) rules - have not been used effectively to support Agency risk assessment or risk management decisions. Commenters went on further to say that under the voluntary UEIP, EPA was furnished exposure-related data on 60 HPV chemicals (actually only 48), but only two reached the initial risk assessment stage.

The alternate data sources commenters described were generally sources that EPA had already evaluated in its analysis for the proposed rule or with which EPA was otherwise familiar. EPA explored a wide variety of public data sources, as demonstrated in the following: ''Inventory Update Rule (IUR) Amendments Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening'' (Ref. 14), ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule'' (Ref. 26), and ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA'' (Ref. 27) (see also Unit V.B.5. of the proposed rule at 64 FR 46780)). For the most part, commenters did not identify new sources or provide additional information to support the assertion that these alternate data sources provide the information that EPA proposed to collect under IURA. After considering the information provided, EPA believes the decision not to use an alternate data source as a replacement for IURA is still sound. The Agency may, however, evaluate an alternate source for individual chemicals as part of its consideration of a particular chemical under the new exemption process established in the final rule.

EPA has spent considerable effort and resources evaluating other data sources that could potentially provide the accurate and up-to-date information that the Agency needs. A primary consideration, as mandated by TSCA, was not to subject industry to unnecessary or duplicative reporting. The exposure information sought under IURA is not currently accessible to EPA. Although some useful exposure-related data exist in some sources, the data are insufficient for the purposes to which IURA data will be put, typically because they are neither timely or detailed enough. Without IURA, EPA has difficulty efficiently screening potential risks posed by approximately 4,000 higher production chemicals on the TSCA Inventory.

Commenters stated that, if EPA were to have specific concerns about information collection for substances or categories of substances, the selective use of TSCA section 8(a) PAIR (40 CFR part 712) reporting would be more cost effective than requiring all manufacturers exceeding a production trigger to report manufacturing, processing, and use information. EPA disagrees with the suggestion that PAIR rules would be an efficient or cost effective way to compile a data base to allow the relatively large-scale risk screening of chemicals on the TSCA Inventory. PAIR is a very useful data collection tool when one or a small group of chemicals is targeted for risk assessment; however, PAIR is limited when collecting information on a large number of chemicals. Additionally, the PAIR rule has fewer, less definitive data elements than IURA, is a one-time collection versus the recurring collection of IURA, and will not provide data sufficient to meet the goals of IURA. Use of PAIR rather than IURA would force EPA to set risk screening priorities based on hazard and production volume alone, or in response to requests from others. As discussed in the document entitled ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response To CMA'' (Ref. 27), this approach greatly hinders EPA's ability to make effective and efficient risk management decisions.

EPA plans to continue using existing data sources and information sets. For example, EPA has used data previously collected under PAIR, CAIR, and the UEIP in a variety of ways, such as to support TSCA section 4 test rule analyses, to provide analyses for the Agency's efforts under the OECD SIDS program, and in support of international efforts (Refs. 18 and 27). However, the existing sources are generally best used when conducting a more detailed risk assessment of a specific chemical of concern, rather than preliminary risk screening of a relatively large set of chemicals. The IURA submissions will provide a consistent set of screening level exposure data that will allow EPA to better identify on a relative basis the chemicals of highest priority for further risk evaluation. EPA will use IURA data to identify those specific chemicals which are of potential concern and need follow up assessment. For instance, IURA exposure data integrated with HPV Challenge Program hazard data will provide the input needed to effectively develop risk-based priorities for more detailed assessment of chemicals. Once EPA has determined that a specific chemical (or group of chemicals) has sufficient potential for exposure or risk to warrant further assessment, the Agency will use the other information sources and data gathering tools as appropriate.

4. *Can TSCA information be used for right-to-know purposes*? Some of the commenters stated that TSCA does not authorize EPA to promulgate IURA based in part on EPA's goal of providing ''right-to-know'' information to the public, non-governmental entities and private organizations. In addition, some commenters noted that OSHA and other agencies have their own authorities to collect information on chemicals.

TSCA contains many of the principles embodied in the right-to-know concept. For instance, TSCA section 14(b) specifically authorizes EPA to disclose health and safety data collected under the statute. TSCA section 14 reflects the legislative determination that certain TSCA data should be available to the

public and interested parties. In addition, sections 4, 5, 6, as well as section 21, for example, provide opportunities for public participation in chemical management decisions. Participation must be meaningful, and to be meaningful the public must have access to TSCA non-confidential information.

TSCA was designed in part to address the lack of health, safety, and exposure information government agencies and the public faced in dealing with chemicals. See, H.R. Rep. 94-1341 at 6 (1976), reprinted in Legislative History of the Toxic Substances Control Act, at 414 (1976) (''Present authorities for protecting against and regulating hazardous chemicals are fragmented and inadequate . . . Most significant among the deficiencies are . . . (3) No authority exists for collection of data to determine the totality of human and environmental exposure to chemicals.''). TSCA was seen as a way of providing federal agencies and the public with access to health, safety, and exposure data so that the risks of chemical substances could be more fully evaluated and understood. See, Statement of Sen. Hartke, Cong. Rec., March 26, 1976 [S4397- 4432], reprinted in Legislative History of the Toxic Substances Control Act, at 218 (1976) (''[T]he essential element of this legislation is that it has attempted to provide for the individual- not only who works, but for the rest of American society- the right to know what is in store as far as the toxicity of the chemicals is concerned.''). Congress envisioned TSCA as a tool for providing the public and others with health, safety, and exposure information about chemical substances.

Finally, TSCA does not limit the use or disclosure of data (except if data are considered confidential) collected under the statute. Congress drafted TSCA in part to provide basic health, safety, and exposure information to other federal agencies, as well as state, local and international governments. TSCA provides several mechanisms--TSCA sections 9, 10, and 12 for example--for sharing health and safety data among various levels of government. These sections again demonstrate TSCA's role as a tool for gathering and disseminating information about chemicals.

B. Comments on Specific Data Elements

1. *Manufacturing information*—a. *Physical form*. EPA requested comment on its proposed requirement that submitters report the physical form of a chemical as it leaves the site of manufacture. Several commenters suggested variations on the specifics of physical form reporting, but generally agreed with reporting the physical form as the chemical leaves the site of manufacture. For instance, one commenter suggested expanding the types of physical forms that can be reported. EPA has determined that the six categories as proposed (see § 710.52(c)(3)(viii) of the regulatory text) will be adequate for risk screening purposes, and is not adding additional physical form categories at this time. Experience with the same six physical form categories as part of EPA's exposure screening assessment of over 20,000 chemicals in its New Chemicals Program indicates that the categories of physical forms that EPA is using under IURA will be adequate.

Other commenters recommended that EPA allow submitters to report more than one physical form for each reportable substance, because a substance may leave a site in more than one physical form. EPA agrees with this comment and is requiring in this final rule that submitters report all physical forms of a substance when the substance is sent off-site. Reporting on all physical forms in IURA will lead to a better assessment of exposure to a chemical substance. For example, processing a fine, nonagglomerating powder could result in occupational exposure by inhalation of chemical dust. Processing the same chemical as a liquid solution would eliminate, or at least reduce, the inhalation risk (the liquid could become an aerosol and be inhaled, depending on the processing activity). By combining data elements on the physical form of a chemical substance, its production volume, and the fraction directed to each industrial processing or use activity, a screening estimate of the potential exposure associated with manufacturing or processing of a chemical substance can be derived. The resulting exposure assessment will be more representative and less conservative than if the physical form(s) were unknown. For these reasons, EPA is requiring the reporting of all physical forms in which a chemical substance leaves the manufacturing site.

b. *Concentration*. EPA originally proposed to require the reporting of both maximum and average concentrations of each reportable chemical substance at the time the substance is sent off-site. A number of commenters felt that this information would be difficult to report for the following reasons: Chemicals may be used in many product formulations at a given plant site and there may often be no consistent average or maximum concentration of an individual chemical across these formulations; such information does not reside in any currently available data bases and would need to be generated for IURA reporting (which would be particularly difficult with respect to average concentration information); and average and maximum concentrations may vary in product formulations during different IURA reporting cycles. Commenters suggested that maximum concentration information will be misleading if only a small amount of the reportable chemical substance is made available commercially at that concentration, while the bulk of the total quantity leaving the site has a lower concentration. They also indicated that determining average concentration requires a complicated calculation which falls outside the scope of ''reasonably ascertainable'' information. Commenters suggested that average concentration can be calculated by product or by the weighted average of each product, and each of the calculations can result in tremendously different answers.

The Agency has determined that average concentration information is not critical for purposes of screening level exposure assessment and has not included this element in this final rule. Screening level review is typically meant, in part, to serve as a method of identifying chemicals that even at their maximum concentration are less likely to present a risk to human health or the environment. Average concentration information cannot be used to make such a determination.

EPA recognizes that the concentration of an IUR reportable chemical may vary from shipment to shipment leaving a submitter's site, or when reacted on-site to produce a different chemical substance. However, maximum concentration is to be reported in wide ranges and not specific numbers, thereby alleviating the need to determine specific concentrations. Additionally, EPA does not intend for submitters to go to great lengths to determine what maximum concentration ranges to select for IUR reporting. Instead, EPA is simply requiring that submitters select a range of concentrations from a list of given ranges. The ranges from which submitters must select are: Less than 1% by weight; 1–30% by weight; 31–60% by weight; 61–90% by weight, and greater than 90% by weight.

One commenter was concerned that EPA did not specify whether it would require submitters to conduct specific chemical testing or statistical analysis in order to report concentration data, or whether submitters should merely estimate concentrations. In addition, the

commenter was unsure whether a submitter should report the maximum concentration level for each product it manufactures/imports, or simply estimate the overall maximum concentration of the chemical substance. EPA recognizes that concentration data may vary from product to product and from shipment to shipment, and may be difficult to report in some instances, particularly in product formulations. EPA is not requiring the reporting of concentrations in all products and formulations but rather only one maximum concentration, regardless of the chemical substance's physical form(s) or product formulation(s). Because concentration information will be reported in ranges and not as individual values, this information or at least an estimate should be known to or reasonably ascertainable by most submitters. Submitters are not expected to conduct chemical testing or statistical analysis beyond any testing or analyses already done by the submitter as part of normal operations in order to report maximum concentration information. EPA anticipates that chemical importers will frequently receive maximum concentration information from their suppliers, and manufacturers will obtain this information from samples analyzed for quality control. This information is often found in the physical property or hazardous constituents sections of the MSDS.

2. *Industrial processing and use*. The Agency received three comments regarding the IFCs to be reported by submitters that have plant sites at which 300,000 lbs. or more of a reportable chemical substance are manufactured. The first comment questioned how the IFCs would apply to chemicals with multiple industrial uses. The second comment suggested that the Agency provide submitters with a ''free response'' option if their industrial function is not represented among the IFCs. The third comment stated that the IFCs proposed by EPA were adequate.

Submitters are required to report up to 10 unique combinations of processing or use categories, IFCs, and NAICS codes (see § 710.52(c)(4)(i)(A), (c)(4)(i)(B), and (c)(4)(i)(C) of the regulatory text). In making their selection from among the IFC codes, submitters must determine which IFC best represents the specific industrial use of the reportable chemical within a given NAICS code/processing and use category. The Agency will provide examples of how to select which code ''best represents'' an industrial use in the instruction manual that will be available to all submitters (see § 710.59 of the regulatory text). Submitters may report multiple IFCs for the same NAICS code, and multiple NAICS codes may be paired with the same IFC. Unit II.F.7. provides further information on reporting industrial processing and use information.

The set of IFCs adopted by EPA at § 710.52(c)(4)(i)(C) encompasses the vast majority of uses for chemicals subject to IUR reporting. Rather than include all possible industrial functions, EPA selected categories based upon information developed due to other Agency programs such as the TSCA New Chemicals Program and believes that the categories included in this final rule are sufficient for initial risk screening purposes. One commenter suggested that the submitter be allowed to supply a ''free response'' for an industrial function that is not on the EPA list. However, a ''free response option'' could result in a wide array of answers, which EPA would then have to group. The Agency believes the chemical manufacturer is best equipped to determine with which industrial function scenario the industrial processing and use data should be matched. If none of the categories fit, however, the submitter could report the ''other'' category. By aggregating similar uses under a single NAICS and a single IFC code, EPA will be able to more effectively characterize the risk associated with the totality of the production of each chemical substance. By requiring the submitter to identify the appropriate IFC code(s) from the provided list, EPA seeks to minimize the errors that could occur if the Agency, rather than the submitter, attempted to aggregate uses other than those identified in the prescribed list of IFCs.

3. *Commercial and consumer use*—a. *Commercial and consumer product categories*. In the proposed rule, the Agency requested comment on the appropriateness of the commercial and consumer product categories. Commenters had a range of opinions about the proposed categories. One commenter felt that EPA should adopt the use categories used by the European Commission (EC) (Ref. 28). Another commenter stated that the categories appeared to be adequate. A third commenter suggested that the ''C-19 Other'' category be deleted and that the Agency consider requiring the submitter to identify the specific use.

EPA is not changing the commercial and consumer product categories at this time, although the Agency may revisit these categories in the future should a need arise for more specific commercial and consumer use information. EPA has evaluated the EC's set of use categories and has determined that these categories blend functional use information with end use information. They therefore constitute a more complex identification system than the one that will be used under IURA. For the screening level purposes of IURA data, EPA currently believes that focusing on end use information alone for commercial and consumer uses provides the necessary level of detail for its screening level reviews. EPA is concerned that the use of EC's scheme for the commercial and consumer reporting would be overly burdensome for the current needs identified by EPA, due to the greater number of categories (55 EC categories versus 19 IURA categories). Further guidance on the relationship between EC and IURA categories can be found in the instruction manual for IURA (see § 710.59 of the regulatory text) (Ref. 9).

In addition, the EC system does not appear to describe the commercial or consumer end uses in a way that meets the needs identified by EPA and targeted by IURA. For example, a chemical that is used as a propellant would be listed under the category ''aerosol propellants'' using the EC system. Such a listing would not provide the Agency with the information it needs about the type of commercial/consumer product in which the submitter uses the propellant (e.g., paint, a lubricant). For more information on EPA's commercial and consumer category analysis, see the document ''Inventory Update Rule (IUR) Technical Support Document Selection of Consumer and Commercial End-Use Categories'' (Ref. 29). EPA will provide examples of the types of products that fit into its commercial and consumer product categories in the instruction manual that will be made available to all submitters (see § 710.59 of the regulatory text).

EPA considered requiring submitters to identify the specific use of the product, rather than the use a miscellaneous ''Other'' category. However, the Agency prefers to require submitters to choose from among the commercial and consumer product categories provided at § 710.52(c)(4)(ii)(A) of the regulatory text in order to encourage manufacturers to more carefully consider the listed categories, as opposed to being allowed to provide their own specific description. In this manner, EPA can more effectively assign chemicals to the correct categories, and avoid guessing the appropriate categories because the Agency believes the chemical manufacturer is best equipped to determine with which commercial or

consumer category their product use best fits. By aggregating similar product categories, EPA will more effectively characterize the risk associated with the totality of the use of each chemical substance. Requiring the submitter to identify the appropriate product categories from the provided list will minimize the errors that could occur if the Agency, rather than the submitter, attempted to aggregate uses other than those identified in the prescribed list of product categories.

b. *Non-TSCA end uses*. Three commenters requested that EPA not only continue to exempt chemicals that are manufactured only for non-TSCA purposes (such as pesticides, drugs, cosmetics, etc.) from all IURA reporting, but also exempt manufacturers of IURA-reportable TSCA chemicals from the requirement that non-TSCA downstream uses be reported (such as use of a TSCA chemical by a downstream processor in making a pesticide, etc.). These commenters assert that EPA does not have authority under TSCA to implement requirements of this sort.

EPA agrees that substances that are manufactured only for non-TSCA purposes, as described in TSCA section 3(2)(B), are exempt from all TSCA requirements and are not subject to reporting under IURA. Therefore, substances that are intended at the time of manufacture to be used for non-TSCA purposes (e.g., as a pesticide, as a drug) do not have to be reported.

The Agency also agrees that submitters under IURA will not be required to report on the non-TSCA downstream uses of the TSCA chemicals that they manufacture. It is important to note that EPA was able to reach this conclusion without reaching the issue of whether it has the authority to require such reporting. Descriptions of IFCs (see § 710.52(c)(4)(i)(C) of the regulatory text) have been clarified to reflect the fact that they only include TSCA uses. For example, one of the IFCs is called ''Agricultural chemicals (non-pesticidal).'' The consumer and commercial product categories (see § 710.52(c)(4)(ii)(A) of the regulatory text) are also restricted to TSCA uses. An example of one of these categories is ''Lawn and garden products (non-pesticidal).'' This category includes chemicals such as compressed gasses in delivery systems for many pesticides used indoors and outdoors, and other intermediates, but does not include pesticides. Additionally, many lawn amendments such as fertilizers contain chemicals that may be regulated under TSCA, (e.g., surfactants).

c. *Exempt reporting of use information for chemicals in articles.* Two commenters believed that to the extent a submitter's reportable chemical is used in an article, the submitter should be exempt from the reporting of consumer and commercial end-use information (i.e., § 710.32(c)(5) of the proposed regulatory text). The commenters stated that there is no reason to believe that consumer exposure will result from chemicals in articles.

EPA does not agree that manufacturers of chemicals that are later incorporated into articles should be exempt from the reporting of consumer and commercial end-use information. Certain exposures do result from chemicals incorporated in articles. For example, potential dermal and inhalation exposures occur from chemicals incorporated into products in the category ''fabrics, textiles and apparel.'' Specific cases, such as formaldehyde from pressed wood products used in mobile homes or chlorinated flame retardants used on children's sleep wear, also demonstrate that potentially harmful exposures can occur from chemicals incorporated into articles.

d. *Usefulness of percent production data and maximum concentration data*. A commenter felt that in the case of consumer products in particular, it is unclear whether the percent production data and maximum concentration data required under § 710.32(c)(5)(i)(B) and (c)(5)(i)(C) of the proposed regulatory text would add any material information to the production volume information already required under the existing IUR. The commenter stated that the volumes of chemicals they will report as having been manufactured, and for which they will report maximum concentration information, are in the products the commenter sells. Therefore, the Agency will already have the needed production volume and concentration information and does not need to collect these particular data elements for consumer products.

Production volume and concentration information reported at the manufacturing site is typically different information than percent production volume and concentration in consumer and commercial categories. Often manufacturers will sell a chemical for multiple uses, in a variety of products, or the chemical will be used multiple times before reaching the consumer/commercial product. For instance, a manufacturer may report that a chemical is used in three different commercial and consumer product categories—20% of the manufactured production volume is used in category A, 35% in category B, and 45% in category C. Additionally, while the manufacturer sells the product at a certain concentration (say 90%), a final product may have a different concentration. For instance, the final product may contain only 5% of the chemical. The resulting potential exposure scenario associated with such a product would be very different from a scenario where the concentration in the final product is 90%. The Agency, therefore, is retaining the commercial and consumer percent production volume and maximum concentration data elements.

4. *General data elements comments*—a. *Workers who are ''reasonably likely to be exposed'' to a reportable chemical*. EPA requested comment on alternative definitions of ''potentially exposed worker'' and ''reasonably likely to be exposed.'' Specifically, EPA requested comment on whether OSHA definition of ''employee'' in its hazard communication standard (29 CFR 1910.1200(c)) is more appropriate for use in IURA. The hazard communication standard defines ''employee'' as a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered. OSHA's hazard communication standard also defines ''exposure'' or ''exposed'' as the exposure of an employee to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure.

One commenter stated that OSHA's definition of an employee is appropriate to identify persons reasonably likely to be exposed to chemical substances. This commenter stated that the Agency should broaden the definition of exposure in IURA to include potential (accidental or possible) exposures to chemical substances which workers may experience in the course of their employment. This commenter also stated that this is what worker exposure entails in the real world and to exclude some portion of those worker exposures, as EPA proposed, is inappropriate. A second commenter felt that persons who could be exposed to a chemical substance in foreseeable emergencies should be included in EPA's new definition for persons who are reasonably likely to be exposed to a reportable substance.

EPA has determined that the OSHA definition of ''employee'' does not provide a more appropriate standard than the one proposed and finalized in IURA. Whereas OSHA wanted to provide all persons who could foreseeably be exposed to a chemical substance with knowledge of the potential hazards of that chemical, EPA is seeking to specifically identify those persons routinely exposed to chemical substances and for whom engineering controls and personal protective equipment are likely to provide the greatest benefit. The definition adopted by EPA for a person ''reasonably likely to be exposed'' in this rule will target those individuals who routinely have the potential to be exposed to chemical substances, and for whom chronic risks are greatest. This definition provides more useful and realistic information for the risk screening purposes for which EPA envisions IURA data will be used.

b. *Personal protective equipment*. EPA requested comment on whether the Agency should collect information on the use of PPE during the manufacture of chemicals reported under IURA. Several commenters stated that EPA should not collect PPE information for the purposes of risk screening. After reviewing these comments, EPA agrees that collecting information on the availability of PPE would not enhance the initial risk screening process, and has determined that this data element should not be added to the IUR as part of this rulemaking. Because EPA cannot ensure that protective equipment will be available to all employees and, if available, will be used properly in a well managed hygiene program, the potential risk encountered in the manufacture, processing, or use of a chemical substance is initially assessed by EPA in the absence of PPE information. The IURA is designed primarily to collect only screening level information. Inclusion of PPE in risk assessment would require collection and integration of location-specific information on physical conditions and the PPE used, and would greatly complicate the risk assessment. This type of information is more likely to be included in assessments more detailed than the initial risk screening assessment for which IURA information will be used.

A commenter suggested that EPA use PPE information as a way to submit lower estimates for various IUR data elements, such as the number of workers. For the reasons provided in the previous paragraph, EPA will not use PPE information to lower the estimates of workers reasonably likely to be exposed. Because the reporting of PPE information would not contribute to the initial risk screening process and would impose an additional burden on persons reporting under IUR, EPA is not including information on PPE in the reporting requirements for this rule.

c. *Metric system reporting*. Under IUR, data are currently reported using the U.S. customary system of measurement units (e.g., pounds and yards). EPA requested comment on changing reporting requirements to require metric system reporting instead (e.g., kilograms and meters). Two commenters suggested that EPA convert to metric system units or at least give submitters the option of using either metric or U.S. customary units. One commenter requested that EPA continue to require the use of U.S. customary units or give submitters the option of reporting in either metric or U.S. customary units. EPA has decided to continue to require the use of the U.S. customary system because at least in the short term, this allows the IUR data base to remain compatible with other Agency data bases, especially TRI, which also typically use the U.S. customary system. EPA believes allowing for reporting using either the U.S. customary or metric systems of units would create confusion and increase reporting and administrative error. EPA may revisit this issue in future IUR amendments.

C. Reporting Universe Comments

EPA received a variety of comments concerning which chemicals and sites should be subject to reporting and recordkeeping requirements.

1. *Chemical categories undergoing changes in reporting status*. In the IURA proposal, EPA created exemptions from reporting for several groups of chemicals that would otherwise be IUR-reportable. The IUR currently contains full reporting exemptions for inorganic chemicals, polymers, microorganisms, and naturally occurring chemicals. EPA proposed to modify these exemptions by: (1) Requiring partial reporting for inorganic chemicals in lieu of the existing full exemption; (2) creating a partial reporting exemption for chemical substances termed ''petroleum process streams'' for purposes of reporting under IURA; and, (3) creating a full exemption for certain forms of natural gas. EPA also requested comment on the creation of additional exemptions, but asked that commenters provide a clear supporting rationale for creating such exemptions.

a. *Inorganic chemicals* - Many commenters submitted comments about the removal of the full exemption for inorganic chemicals.

EPA originally created the inorganic chemical exemption because it believed that the hazard potential of many inorganics was ''relatively well-established'' (50 FR 9944, 9947, March 12, 1985) and that hazard information alone was sufficient for prioritization within inorganic chemical substance risk assessments. EPA now intends to increase the consideration given to exposure, another component of risk, in screening chemicals and in setting priorities for risk assessment and risk management activities. The Agency no longer believes that chemical hazard information alone provides a sufficient basis for prioritization for these purposes. As a result, the former basis for this exemption is no longer applicable.

i. *Why does the Agency need basic IUR information on inorganic chemical substances*? During interagency review prior to proposal it was suggested that EPA first collect the IUR information in §§ 710.52(c)(1), (c)(2), (c)(3), and 710.58 of the regulatory text (Parts I and II of the revised Form U) on inorganic substances before collecting the processing and use information in § 710.52(c)(4) of the regulatory text (Part III of the revised Form U). It was thought that partial reporting would allow EPA to become generally familiar with the production volumes of inorganic chemicals, and would permit manufacturers of these substances to familiarize themselves with the most basic IUR requirements before being required to comply with the processing and use data requirements. Many commenters stated that EPA had not demonstrated the practical utility of collecting basic information on inorganic substances. Other commenters felt the Agency should collect these data and that inorganic chemicals should not have had an exemption under IUR.

EPA uses basic IUR information in a wide variety of ways (as described in Units II.C. and E.) and expects the basic IUR information on inorganic chemicals to be used in similar ways. For example, EPA used IUR information in the HPV Challenge Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm) to identify chemicals produced in aggregate national volumes of one million pounds or more. The HPV Challenge Program has not been able to include inorganic chemicals as EPA did not have the necessary production volume information on the inorganic chemicals produced in or imported into this country. Additionally, the TSCA Interagency Testing Committee (ITC) has encountered difficulties in its attempts to identify inorganic chemicals for recommendations to EPA for testing or other further evaluations due to the lack

of even the most basic IUR data for these chemicals (Ref. 30).

ii. *Why is EPA phasing in reporting for inorganic chemical substances*? EPA requested comment on completely removing the inorganic chemicals exemption, requiring reporting of all of IURA information, including the information described in § 710.52(c)(4) of the regulatory text on inorganic chemicals manufactured in volumes of 300,000 lbs. or more at a site. Some commenters supported phased-in reporting of this information, where EPA would maintain a partial exemption (i.e., requiring the reporting of all of IURA information except the information in § 710.52(c)(4)) for the first submission period only and would require full reporting in subsequent submission periods. EPA agrees with this approach because it provides new submitters with an opportunity to become familiar with basic IUR reporting, allows EPA to become familiar with the current inorganic chemical industry, and provides basic production information in the first submission period. Requiring full reporting for inorganic chemicals in subsequent submission periods provides EPA with the processing and use exposure-related information needed to continue efforts begun with the first reporting year information.

EPA's primary use of both the basic data collected during the first submission period and the additional exposure-related data collected during subsequent submission periods will be to identify priority TSCA chemicals for more detailed information gathering, risk assessment, and risk management in order to develop targeted programs to protect human health and the environment. Screening chemical risks generally requires a combination of both hazard and exposure information. The absence of exposure-related data for inorganic chemicals, beyond even the basic production data collected during the first submission period under IURA, would severely limit the usefulness of IURA data for risk screening. See Unit III.A.1. for further discussion of additional uses of IURA exposure-related data.

While some commenters supported the phasing-in approach, other commenters suggested that EPA review the information collected on inorganic chemicals under the partial exemption and collect additional information on these chemicals through a future rulemaking. Commenters suggested a variety of ways to collect this additional information, including specifically listing chemicals that would be subject to future IUR collections or using PAIR. However, EPA's experience with using information from other sources or collecting information using PAIR has demonstrated that this approach is insufficient, as discussed in Unit III.A.3.

iii. *Why doesn't EPA use already available information on inorganic chemical substances*? Commenters stated that the inorganic chemicals data that EPA needs to conduct screening level risk assessments are already available from a variety of sources, including the USGS's annual reports on mineral production, health assessment documents prepared by the Agency for Toxic Substances and Disease Registry, studies by OSHA, the TRI compiled by EPA, and literature published by trade associations. EPA closely examined these data sources, and concluded that, while useful, these sources are inadequate to meet the Agency's data needs for inorganic chemicals.

Some of the suggested data sources pertain to naturally occurring substances which are exempted from reporting by a provision in IUR that EPA has not proposed to change, i.e., 40 CFR 710.26(a)(3), which is codified as § 710.46(a)(3) for IURA. Many of the remaining data sources identified by commenters pertain to metallic alloys or studies of a single metal species and do not include information on the multiplicity of pigments, flocculating agents, oxidants, photochromic salts, flame retardants, catalysts, and other inorganic compounds for which data are sought through IURA. In some cases, the data sources are one-time collections of information and therefore would not provide current information on the inorganic chemical industries. Others, although revised from time to time, do not identify the chemicals with sufficient specificity, do not identify the manufacturing site or a technical contact, and/or do not provide information on the use of the inorganic chemical. In sum, the data sources identified by commenters and by EPA are not sufficient to provide the information sought through IURA. EPA has consulted with USGS to investigate whether the USGS annual survey of approximately 80 minerals could be amended to better serve as a source for use and exposure data that could be used in place of IURA for those minerals (Ref. 31). EPA plans to identify and initiate dialogues with other federal agencies about collection activities that have the potential for generating additional federal paperwork burden reductions, particularly related to the IURA. The new exemption process established in the final rule provides an opportunity for EPA to consider alternate sources of information for individual chemicals. EPA is extremely sensitive to the PRA's directive for federal agencies to reduce unnecessary burden, and will continue to consistently strive to find areas in which burden can be decreased to the maximum extent practical, as well as carefully evaluate new or revised information collections to ensure that the Agency's informational needs are met with the minimal burden possible. Although none of the identified alternate sources appear to be sufficient to replace IURA, EPA believes that an alternate information source could provide sufficient information for a particular chemical. EPA is also willing to work with other agencies to perhaps resolve differences in the various information collection activities in an effort to reduce overall reporting burden on industry.

Additional discussion of the applicability of available data sources is found in ''Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments'' (64 FR 46772) (Ref. 18) and in ''Inorganic Chemicals: Sources of Information Suggested by Commenters to the Proposed Inventory Update Rule Amendments'' (Ref. 32).

b. *Partial exemption for petroleum process streams*. EPA proposed a partial exemption from IURA reporting for certain chemical substances that the Agency is calling ''petroleum process streams'' for purposes of IURA and requested comment on duplication of reporting under the information collections conducted by DOE's Energy Information Administration (EIA) through EIA forms EIA 810, EIA 816, and EIA 64A. Operators of all operating and idle petroleum refineries, blending plants, or blending terminals must complete form EIA 810 to provide a monthly refinery report on their operations to DOE. Operators that extract liquid hydrocarbons from a natural gas stream and/or separate a liquid hydrocarbon stream into its component products must complete form EIA 816 to provide a monthly natural gas liquids report to DOE. Operators of domestic natural gas processing plants must complete form EIA 64A to provide an annual report of the geographical location and geological formation of natural gas liquids production to DOE. In the IURA proposal, EPA stated its intention to work with DOE to identify potential duplication and to further investigate the potential usefulness of DOE's information collections in fulfilling EPA's statutory obligations under TSCA.

One commenter stated that EPA could use the DOE data along with other supplemental information sources to generate the type of petroleum process stream information that IURA proposed to collect. Several commenters also stated that the proposed IURA reporting would be duplicative of DOE reporting for certain chemicals, particularly fuel oil #2 and kerosene, and that EPA should therefore fully exempt those chemicals from reporting under IURA.

EPA has investigated the information collection conducted by DOE through EIA forms EIA 64A, EIA 810, and EIA 816, and has determined that chemical substances are not sufficiently identified for EPA's purposes in the DOE reports. For example, many of the chemical substances in the DOE reports are identified by nomenclature other than the CAS nomenclature used by EPA for TSCA purposes, are identified in broad categories, or are not identified by CAS number. Many of the chemical names used by DOE are either generic or represent groups of chemicals. For example, distillate fuel oil, reported on EIA Form 810, may refer to several chemicals on the TSCA Inventory, such as fuel oil #2, fuel oil #4, or fuel oil #6. This lack of specific identifier information means that EPA and others cannot distinguish which information collected by DOE is attributable to which chemical. More specific identification is needed to attribute the appropriate hazard and physical and chemical properties to the petroleum stream.

The DOE information also lacks important exposure components and identifiers that are necessary for exposure and risk screening activities. For example, the DOE information does not contain the number of workers reasonably likely to be exposed to a chemical or the maximum concentration of the chemical. In addition, it may be difficult to discern from the DOE data if a petroleum process stream is used as a solvent in a consumer product or as a combustible fuel. This is an important distinction because the likelihood of exposure to a petroleum process stream depends on its use. These data are needed elements that will fill a vital data gap in chemical risk screening.

Several persons commented that there is no need to collect exposure-related data for petroleum process stream manufacturing operations because physical hazards existing at many sites currently necessitate extensive safety precautions that limit worker exposure. Discussed in more detail in Unit II.F.1.b.

c. *Exemption for certain forms of natural gas*. EPA proposed that six natural gas substances be fully exempt from reporting under IURA. In addition, EPA requested comment on whether reporting for the six substances should be required in upcoming submission periods and whether they were the appropriate natural gas substances for inclusion in the proposed exemption.

Commenters expressed support for the full exemption of the six natural gas streams listed in the proposed IURA. These commenters also recommended adding fuel oil #2, kerosene, methane, ethane, propane, butane, pentane, and hexane, and liquefied natural gas to the full exemption list. The commenters stated that an exemption is warranted for these chemicals because: (1) DOE already requires annual and monthly reports for the chemicals which contain the same information requested by EPA; (2) the chemicals are similar in chemical composition to the six chemicals EPA proposed to exempt; (3) their chemical structure and identity remain the same throughout processing; (4) a similar amount of data is available for these chemicals as for the six chemicals EPA proposed to exempt; and, (5) a similar number of TSCA reports are filed for these chemicals as for the six chemicals EPA proposed to exempt.

EPA has retained the exemption for certain forms of natural gas as proposed. Adequate IUR information has been collected on the six chemical substances to fulfill EPA's and other IUR information users' current needs. EPA will take action to revoke this exemption if circumstances warrant in the future.

Liquefied natural gas, which is a form of natural gas (CAS No. 8006–61–9), is covered under the natural gas exemption. EPA did not include ethane, methane, propane, butane, other paraffinic hydrocarbons, fuel oil #2, or kerosene in the list of substances included in the natural gas exemption because they are not just isolated components of natural gas but are also chemical substances which can be produced from other source materials, chemical process streams, feedstocks, or reactants. These alkanes have significant uses in chemical manufacturing, including the production of ammonia and methanol from synthesis gas derived from methane, thermal cracking of ethane/propane mixtures to produce ethylene, and vapor-phase oxidation of n-butane to produce maleic anhydride. At present, there is not a sufficient basis to conclude that data on all significant uses of these alkanes are adequate.

EPA did not rely on the data contained in the DOE reports discussed in Unit III.C.1.b. in its creation of the new exemption for certain forms of natural gas. While some useful information for these chemicals is included in the DOE reports, it is insufficient for exposure or risk screening (see Unit III.C.1.b.). Downstream processing and use exposure information collected through IURA for these chemicals will not duplicate information collected by DOE.

2. *Exemption of additional groups of chemicals from IURA reporting or from the reporting of specific data elements*. EPA requested comment in the proposed rule on the selection of chemicals that might be exempted from reporting under IURA and on specific criteria to distinguish these chemicals from those that remain subject to reporting. EPA received many industry comments in favor of creating a new exemption for chemicals that may be considered to be ''low priority,'' but commenters did not indicate standard criteria for establishing such exemptions. However, in response to these comments and comments received during interagency review, EPA created a partial exemption (i.e., an exemption from the reporting of information required under regulatory text § 710.52(c)(4)) for certain chemicals for which the collection of processing and use information is currently of ''low interest.'' This new partial exemption is intended to improve IURA's efficiency and effectiveness. EPA has established a process by which future changes to the chemicals included in the partial exemption can be made after careful examination of the totality of information available for the chemical substance, including but not limited to the considerations provided in § 710.46(b)(2) and discussed in Unit II.F.1.d. This partial exemption also provides additional benefits in reducing the potential reporting burden of IURA for certain manufacturers of these chemicals. The inclusion of a chemical substance under this partial exemption does not address the potential risks of a chemical. This partial exemption is solely intended to provide a tool to assist the Agency in better managing the collection of processing and use information under IURA. See Unit II.F.1.d for a discussion of the exemption and the process to add or remove chemical substances from the exemption.

In addition, commenters suggested classes of chemicals for exemption. EPA has determined that none of these suggested exemptions can be implemented at this time, as described in the remainder of this section.

a. *HPV chemicals*. A number of commenters stated that industry is already providing EPA with sufficient hazard data via the HPV Challenge

Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm), as well as exposure data through other voluntary programs (e.g., International Council of Chemical Associations (ICCA) data collections and UEIP). Therefore, providing exposure-related information on HPV chemicals via IURA would be duplicative and unnecessary.

The Agency recognizes that a variety of voluntary and regulatory efforts to collect hazard data are underway, such as the voluntary HPV Challenge Program. However, the scope and expected output from the HPV Challenge Program differ markedly from those anticipated under IURA. The HPV Challenge Program centers on providing basic hazard data for HPV chemicals, most of which will also be IURA-reportable chemicals. The IURA focus is on gathering exposure-related information for moderate and high volume chemicals in a wide range of industrial operations, involving multiple sites and covering manufacturing, processing, and use of the chemical substances.

The Agency is unable to limit its IURA information collection efforts to HPV chemicals alone, for several reasons. The Agency could not know definitively which chemicals are HPV substances in any particular IURA reporting cycle as of that reporting year. A chemical substance meets the criteria for an HPV chemical by meeting a one million pound national production volume threshold, based upon the aggregate production volume in the nation (as reported to IUR). Production volumes can vary significantly over a 4–year reporting cycle, and it is not uncommon for chemicals to rise above or fall below the HPV threshold each reporting cycle. For instance, EPA used 1990 IUR reporting to identify approximately 2,800 HPV substances. An additional 500 substances which were not HPV chemicals in 1990 were identified as being HPV via the 1994 IUR production volume data. The IURA collection could be limited to the HPV Challenge Program chemicals (i.e., the baseline set of chemicals for the program, consisting of chemicals that were HPV according to 1990 IUR information). However, that restricts IURA's ability to supply screening level exposure information to only those HPV chemicals. This would severely limit the usefulness of IURA over time, as the universe of chemicals that were HPV in 1990 will not be the same universe of chemicals that are HPV in future years, and would compromise the Agency's broader responsibility for risk screening.

b. *Existing Chemicals Program ''low concern'' chemicals*. Commenters recommended that the chemicals previously determined by EPA to be of low concern via the Existing Chemicals Program be exempt from reporting under IURA. However, commenters did not provide sufficient criteria that would clearly distinguish exempted chemicals from others subject to IUR reporting. EPA cannot create exemptions without a clear basis or justification. During the development of these amendments, EPA considered exempting chemicals previously reviewed by the Existing Chemicals Program, but was unable to develop standard criteria for such an exemption (See Ref. 33 and Unit IX.3. of the proposal preamble, at 64 FR 46794). Under the Existing Chemicals Program, no standard criteria were used for determining which chemicals were lower priority, because in the course of the program many different chemicals involve unique risk assessment or risk management issues. For example, many chemicals were analyzed within a specific use, and other uses were not examined. As an alternative to this approach, EPA developed a partial exemption for chemicals which are determined to be of low current interest for purposes of IURA processing and use information reporting, based on considerations described in Unit II.F.1.d., and identified an initial list of chemicals currently covered by the partial exemption (Ref. 5).

c. *Organization for Economic Cooperation and Development (OECD) chemicals*. Commenters recommended that the chemicals for which EPA has a minimum set of hazard and exposure data, such as OECD's SIDS chemicals that have completed the SIDS process, be exempt from reporting under IURA. Commenters also suggested that chemicals in the International Council of Chemical Association (ICCA) screening level data collection programs be included in this exemption.

EPA disagrees that data collection efforts through the OECD and ICCA programs provide sufficient exposure information to replace IURA information. Data collection efforts under the auspices of OECD and ICCA concentrate on the development of hazard assessments and generally provide only a small fraction of the exposure-related data called for under IURA. A goal of the ICCA Program is to process chemical cases through OECD's HPV SIDS Program, which develops hazard information for the program chemicals. As hazard data do not change from year to year, the data collection supports a one-time report. The IURA will provide current exposure-related information for risk screenings and preliminary assessments. Exposure information, as collected under IURA, will vary from reporting year to reporting year and therefore needs to be collected on a continuing basis. While the OECD HPV SIDS Program does not specifically disallow the collection of exposure information, the program does leave such collection to the discretion of the sponsor country (Ref. 34). Exposure information available via SIDS is therefore generally not specific to U.S. uses and concerns.

d. *Metals*. Various commenters stated that either metals as a group, or specific metals such as zinc and copper, should be granted special consideration for IURA reporting. Several commenters asserted that providing information on maximum concentrations is unnecessary for the metals, because they will generally have close to 100% concentrations when they leave the manufacturing site or whenever they are present in consumer or commercial products. Further, commenters indicate that the only exposure potential for these substances in commercial or consumer products will be dermal (not via other routes such as inhalation or ingestion). Additionally, a commenter stated that workers ''in proximity'' to or handling solid metal articles should not be considered to be exposed for reporting purposes, because the metal is in a form in which neither inhalation nor dermal exposure will occur. Other commenters believed that any IUR reporting on metals is unnecessary because ample information on metals production and exposure potentials is already available from other sources, such as the USGS, or because specific metals, such as copper and zinc, are beneficial to human health and therefore should be of no exposure concern.

Metals present some unique issues regarding exposure potential, and the information that will be collected under IURA on metals will do much to improve EPA's and others' knowledge about the uses and exposures associated with these chemicals. Not all metal-containing products are pure metal. For example, metal powders used in fine arts, metal pastes used in repairs, and commercial metallic paints contain varying percentages of metals. In addition, although some metals in trace quantities, such as chromium, are essential nutrients to plants and/or animals, in greater exposure concentrations these same metals can be harmful.

Because metals are ubiquitous and can be present in a variety of physical forms, different routes of exposure are possible. Chronic exposure to solutions

containing metals such as nickel may result in contact dermatitis. Milling metal parts containing antimony and beryllium creates dusts which, if inhaled, can result in acute chemical pneumonitis. Inhalation of fumes containing chromium resulted in an elevated incidence of bronchial carcinoma among workers in the U.S. chromate industry before the source of the exposure was recognized and corrected. Exposure by ingestion is of concern for metals that may enter water sources following improper disposal of used materials, for example. The use of cadmium in batteries for portable electronic devices, including computers, is increasing; long-term exposure to cadmium has a potential to cause kidney, liver, bone, and blood damage.

EPA has exempted submitters that would otherwise be subject to IUR reporting from reporting with respect to chemicals that are imported in the form of an article (see 40 CFR 710.30(b) and § 710.50(b) of the regulatory text). However, submitters that manufacture a reportable chemical and incorporate it into an article will continue to be subject to reporting under the IURA.

The Agency reviewed a number of sources that provide information about metals production and characteristics, including USGS data specifically noted by commenters (Ref. 32). The information, although useful for depicting global mining and production of the major commercial metals, is not comparable to the national scale and domestic exposures data that will be provided under IURA. Further, because metals are subject chemicals in many EPA programs, including the Great Lakes Binational Toxics Strategy; the revised drinking water standards; the revised emission standards for secondary metal refinishers; and the Waste Minimization National Plan, current information about domestic metals production and use will benefit many EPA offices and programs.

As indicated previously, EPA will be reconsidering individual chemicals for applicability under the new partial exemption, and plans to identify and initiate dialogues with other federal agencies about collection activities that have the potential for generating additional federal paperwork burden reductions, particularly related to the IURA.

e. *Other chemical groups*. Commenters suggested EPA exempt a variety of additional groups of chemicals from either full or partial IURA reporting. These groups included fossil fuel combustion byproducts such as coal combustion products; fertilizers; substances encapsulated in a polymer matrix; pesticides; and certain chemicals outside the scope of TSCA jurisdiction (such as drugs). Commenters stated that exposures associated with fossil fuel combustion byproducts are already well known, and, with information currently being submitted to EPA and other federal organizations such as DOE, well beyond the amount needed for ''basic screening.'' Commenters argued that reporting on these byproducts under IURA would be duplicative (therefore unnecessary) and overly burdensome, especially because these chemicals are considered ''beneficially used in an environmentally sound manner'' by EPA's Office of Solid Waste (OSW). A parallel argument was made for fertilizers, in that certain commenters consider them to be well-characterized and generally ''safe.'' Similarly, a commenter believed encapsulated substances are of little concern, due to low exposure potentials for the encapsulated chemicals, as implied by the Agency's treatment of such substances under Significant New Use Rules (SNURs); the commenter believed that, when chemicals are secured within a polymer matrix, the SNUR requirements no longer apply. Commenters also stated that pesticides and other chemicals not subject to TSCA should be fully exempt from reporting.

Comments specific to these different groups of chemicals are addressed below.

i. *Fossil fuel combustion byproducts*. Commenters stated that fossil fuel combustion byproducts have been sufficiently studied for beneficial reuse to justify their full exemption from IURA reporting. They asserted that EPA's OSW had adequately reviewed data on these substances to allow their use as solid waste in situations where exposures were possible, such as in the case of soil amendments. The commenters believe that EPA offices such as OPPT and OSW must coordinate their efforts related to fossil fuel combustion byproducts prior to undertaking any actions under TSCA, and suggested that continued reporting on these chemicals would be particularly burdensome.

EPA disagrees with these comments. Review of the recent OSW Report to Congress on the subject of fossil fuel combustion byproducts (Ref. 35) indicates that these products can be hazardous to human health and the environment when mismanaged. These products not only typically contain heavy metals such as cadmium, chromium, lead, and mercury, but leachates from fuel combustion byproducts can contain significant concentrations of arsenic. Despite these concerns, OSW has decided to exempt these substances from regulation as hazardous waste when they are beneficially reused. While OSW was not able to identify damage cases or significant risks to human health or the environment associated with these types of beneficial uses based on available data, OSW plans to assess new information on risks as that information becomes available. The IURA will be instrumental in providing manufacturing, processing, and use data for fossil fuel combustion byproducts to enable OSW to monitor the potential risk associated with these chemical substances. Additionally, as with any chemical byproduct with a use, EPA in general needs information to be able to screen these chemicals for potential concerns outside of the OSW purview. Review of such contemporary data, as shared between OPPT and OSW, will allow EPA to make well-informed risk management decisions by constructing realistic screening level exposure profiles for these substances. These profiles could be adjusted as the production dynamics change between IURA reporting cycles. EPA believes the importance of accurate exposure-related data in formulating sound risk management decisions for fossil fuel combustion byproducts justifies the associated reporting burden.

ii. *Fertilizers*. Fertilizers that qualify for the inorganic exemption have not been subject to IUR reporting in the past. A number of commenters emphasized that, in general, fertilizers are chemicals whose risks have already have been well-characterized. According to the commenters, ample recent hazard and exposure data from studies conducted by EPA's OSW indicate that fertilizers generally are of low toxicity, and some constituents of major fertilizer types are ''safe'' because the exposure potentials are low. Further, as the commenter pointed out, recent SIDS program studies on urea, a common fertilizer, described the chemical to be ''of low priority'' for further investigation, thereby implying that the chemical poses little hazard to human health and the environment, and that adequate risk information is available. Commenters stated that because they believe the constituents are not harmful to human health or the environment, fertilizers should be exempt from downstream use and exposure reporting under IURA (i.e., a partial exemption from IURA reporting). Other commenters stated that fertilizers should be granted a full exemption from

IURA reporting, or that EPA should exempt certain fertilizers by CAS number. One commenter suggested that 20 substances be included in the fertilizer list (see list provided in Comment C4b-6 of the comment summary document, Ref. 18).

EPA does not believe the suggested IURA exemptions for fertilizers and fertilizer constituents are warranted at this time. The Agency does not agree with industry comments citing a 1999 EPA OSW risk evaluation on ''non-nutritive'' components in fertilizers as adequate justification for classifying fertilizers as ''safe,'' and therefore eligible for exemption. The OSW report addresses trace quantities of metal contaminants in those fertilizers (i.e., the non-nutritive elements), not the fertilizers themselves. A review of basic hazard identification guides, such as the Merck Index, the Condensed Chemical Dictionary, and Dangerous Properties of Industrial Materials, shows that exposure to many fertilizers and fertilizer materials, including those cited in industry comments such as anhydrous ammonia, potassium sulfate, and urea, can cause both reversible and irreversible adverse health effects ranging from acute to chronic. The availability of IURA exposure-related data will allow for the risk screening of chemicals used as fertilizers and fertilizer constituents to extend beyond environmental effects and aid the screening of risks to workers, consumers, and the general population. The Agency therefore believes it is appropriate to require reporting for fertilizers under IURA.

iii. *Encapsulated substances*. A commenter stated that the import volumes of IUR reportable components contained within compounded imported polymers should be exempt from IURA reporting. The commenter indicated that volumes of these encapsulated components are difficult to determine. Such components include antioxidants, colorants, lubricants, and stabilizers that are commonly used additives in polymer products. The polymers are sometimes manufactured by a foreign company and imported into the United States. The commenter stated that these additives, which are encapsulated in a polymer matrix, are typically present in the matrix at a few weight percent. The commenter's understanding was that when chemicals are secured within a polymer matrix, the SNUR requirements no longer apply, thus their suggestion was for EPA to treat such substances similarly under IURA.

The SNUR requirements in 40 CFR part 721 do not exempt substances encapsulated in a polymer matrix. Although chemicals incorporated into a polymer matrix are not subject to SNURs in certain limited circumstances, for example, when an individual SNUR specifically states that the SNUR requirements do not apply to such substances (see, e.g., 40 CFR 721.8160(a)), such chemicals are not otherwise generally exempt from SNUR requirements.

Although EPA appreciates the difficulty in ascertaining quantitative production information from manufacturers outside direct U.S. jurisdiction, exempting IUR reportable components encapsulated in a polymer matrix from IURA is not warranted. Not all polymers are inviolable. Additives such as colorants and lubricants, which can be hazardous to human health or the environment, can leach from the polymer matrix, resulting in subsequent exposures. Also, additives which are inherently insoluble in the polymer may migrate to the surface of the polymeric material and be released over time from the polymer. Under IURA, each non-exempted mixture component is reportable if imported above the stated thresholds. Reasonably ascertainable information can be used to estimate these import quantities.

iv. *Pesticides*. Some commenters stated that the Agency should exempt pesticide chemicals from reporting under the IURA, and also should exempt those substances outside the scope of TSCA, including drugs and cosmetics.

The original IUR did not require reporting for chemicals manufactured for non-TSCA purposes. Similarly, in IURA, amounts of an otherwise IUR-reportable substance that are intended at the time of manufacture to be used for non-TSCA purposes (e.g., as a pesticide, as a drug) do not have to be reported. For example, if a company were to manufacture 300,000 lbs. of an IUR-reportable substance, 170,000 lbs. of which were intended at the time of manufacture to be sold as a drug precursor, and 130,000 lbs. of which were intended at the time of manufacture to be used for a TSCA purpose, only 130,000 lbs. of the substance would have to be reported under IUR. The company would not have to report the processing and use information described in § 710.52(c)(4) of the regulatory text for that chemical at that plant site, since the company did not manufacture a total of at least 300,000 lbs. of the chemical at the site for TSCA purposes. Many substances, such as the pesticide active ingredient pentachlorophenol, are also used in industrial and commercial applications regulated under TSCA. In those cases, the chemicals will continue to be reportable under IURA.

v. *Food additives*. Commenters stated that low hazard chemicals, such as food additives, should be categorically excluded from the new reporting requirements. The commenter stated that food use substances, for example, are regulated by the Food and Drug Administration (FDA) and must either be generally recognized as safe (GRAS), the subject of a prior sanction, or the subject of a food additive regulation promulgated by FDA.

According to FDA's Office of Premarket Approval (OPA), food use substances for FDA's purposes are those that are added directly to food, and could inadvertently contact and be incorporated into food because of use in packaging material or in food processing. FDA does not evaluate chemicals for environmental effects--only for human health effects. The chemicals subject to FDA rules are not inherently low hazard in many cases. For example, substances such as plasticizers, lubricants, release agents, acids (e.g., hydrochloric acid), boiler water additives, and solvents (e.g., acetone and hexane) are included as food use substances. Furthermore, even direct (i.e., listed) GRAS chemicals can be of concern when used at industrial concentrations, such as sulfuric acid. Thus, as is true with other chemical substances, food additives can present a risk to human health or the environment depending on use and the resulting exposure pathways. EPA does not believe a categorical exemption for chemicals that may be used as food additives is warranted at this time. Again, such chemicals are only reportable under IURA to the extent that they are intended at the time of manufacture to be used for TSCA purposes.

3. *Thresholds*. EPA requested comment on the 300,000 lbs. threshold for reporting industrial processing and use, and consumer and commercial use information (required under § 710.52(c)(4) of the regulatory text). Commenters generally were supportive of having a second, higher reporting threshold for this exposure-related information. However, one commenter stated that the 300,000 lbs. threshold is too low, and that it should be set at one million pounds to coincide with the HPV Challenge Program threshold.

EPA considered chemicals with aggregate, nationwide U.S. production and importation volumes of one million pounds or more (based on 1990 IUR data) for the HPV Challenge Program. That is, if one million pounds of a

certain chemical were reported for the 1990 IUR as being produced or imported collectively, by manufacturers throughout the United States, then that chemical was identified as an HPV chemical for purposes of the HPV Challenge Program. The 300,000 lbs. IURA threshold captures at least one report for more than 95% of the HPV chemicals reported to the 1990 IUR.

The production volume that defines chemicals as HPV should not be confused with the 300,000 lbs. per year reporting threshold for processing and use data reporting in IURA. The 300,000 lbs. threshold applies to the amount manufactured at a single site and is not an aggregate, industry-wide production number. EPA is implementing the 300,000 lbs. per year reporting threshold for individual IUR submitters because it limits the increase in burden associated with the new IURA processing and use reporting requirements and it limits the number of chemicals for which exposure-related data will be reported to approximately 4,000. This number is consistent with the ''several thousand chemicals'' suggested by GAO in its 1995 report ''EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances'' (Ref. 36), and ensures that exposure-related data will be reported for almost all HPV chemicals (defined by national aggregate production). Increasing the 300,000 lbs. threshold to one million lbs. would drastically undermine the Agency's collection of processing and use exposure-related data. The higher threshold would reduce the number of chemicals for which this information is submitted and eliminate processing and use data reporting on many of the HPV chemicals. The Agency would be left with very little information with which to conduct the needed screening- level assessments and the resulting prioritization would be less meaningful.

In the proposed IURA, EPA also solicited comments on the possibility of replacing the chemicals identified using the 300,000 lbs. annual production volume threshold (by site) with any of five other groups of chemicals. Those groups include: (1) A set of HPV chemicals that submitters identify as being produced nationwide in amounts of one million lbs. or more; (2) chemicals that are currently subject to testing under TSCA section 4 (i.e., test rules and enforceable consent agreements (ECAs)); (3) chemicals identified for voluntary testing; (4) chemicals designated for testing by the ITC; and (5) chemicals listed in the Agency's Master Testing List (the current edition is available at http://www.epa.gov/opptintr/chemtest/mtl.htm).

With respect to the possibility of limiting the collection of processing and use information to HPV chemicals identified by submitters, the Agency asked for comment on: (1) Whether submitters would be able to determine which chemicals have exceeded the nationally aggregated HPV threshold in a given submission period, especially given how frequently chemical production rises above and falls below this threshold from IUR submission period to submission period; (2) what additional burdens such a determination would place on submitters; and (3) whether IURA data would be less useful if processing and use data reporting were limited to HPV chemicals.

Many commenters favored use of the set of HPV chemicals in lieu of the proposed IURA reporting with the 300,000 lbs. threshold, yet none directly responded to the specific Agency questions. Commenters failed to take into account the added burden of aggregating chemical production to determine which substances are HPV chemicals. They also offered no justification for substituting the 300,000 lbs. plant site-specific threshold with a one million lbs. national aggregate threshold, beyond stating that relevant information is being provided already through other programs. Nor did they offer possible solutions to the problem of reliably aggregating production volumes.

EPA does not believe that submitters will be able to effectively aggregate nationwide production volumes. Aggregation is especially difficult in light of continual, market-driven changes in production and many submitters' interest in protecting individual plant site production volume information as CBI. Additionally, for a nationally aggregated one million lbs. threshold to be effective, it must be able to accommodate the frequency with which individual chemicals may rise above or fall below the HPV threshold criteria of a U.S. aggregate production volume of one million lbs. or more per year. For example, 17% of the chemicals which were HPVs according to data submitted under the 1990 IUR were not HPVs according to data submitted under the 1994 IUR.

D. Definitions and Clarification Requests

1. *Is mining considered manufacturing*? Commenters asked whether mining is considered ''manufacturing'' under TSCA. Under TSCA, the term ''manufacture'' includes production or importation of a chemical substance as well as its manufacture (TSCA section 3(7)). Mining, which includes extracting metal ores or minerals from their natural deposits by any means, including secondary recovery of metal ore from reuse or other storage piles, wastes, or rock dumps, or from mill tailings derived from the mining, cleaning, or concentration of metal ores, is production and is considered to be a manufacturing activity under TSCA.

However, chemical substances which are naturally occurring and which, among other things, are unprocessed or processed only by manual, mechanical, or gravitational means (see 40 CFR 710.4(b)(1)) are currently excluded from IUR reporting and will continue to be excluded under IURA (see 40 CFR 710.46(a)(3)). For example, rocks, ores, and minerals are not IURA-reportable to the extent they are manufactured only via the means described in 40 CFR 710.4(b). The § 710.46(a)(3) exclusion is a process-specific exclusion rather than a chemical- or industry-specific one. Therefore, persons who manufacture a substance in a manner other than as specified in § 710.4(b) are required to report under IURA unless they or the substance they manufacture are otherwise excluded. As a result, many mined materials are listed on the TSCA Inventory because at least some of the time they are produced by other than manual, mechanical, or gravitational means.

Section 710.46(a)(3) intentionally exempts from IURA reporting any chemical substance which is isolated or removed from nature, for a commercial purpose, by any means listed in § 710.4(b). It also exempts any other chemical substance derived or separated from the substance originally removed from nature, provided such derivation involved only the means specified in § 710.4(b). For example, when using manual, mechanical, or gravitational processes to separate one or more substances from a naturally-occurring mixture, these isolated component substances are also considered naturally-occurring and excluded from reporting. However, any substance manufactured from a naturally occurring precursor substance via a chemical reaction is not considered naturally occurring and, therefore, not excluded from reporting under § 710.46(a)(3).

2. *What is the difference between ''reasonably ascertainable'' information and ''readily obtainable'' information*? A number of commenters raised concerns about the meaning of ''readily obtainable'' and ''reasonably

ascertainable,'' what level of effort is required for each, and the difference in the level of effort required. Commenters also stated that the expectation that submitters will provide data on users outside their control seems to be an unworkable and unrealistic mandate. The reporting standard of TSCA section 8(a)(2) is ''reasonably ascertainable,'' and commenters stated that this should not be construed to include data that are not in the possession of the person reporting.

''Known to or reasonably ascertainable by'' is the current standard for data collection under which IUR operates and is the standard authorized by TSCA section 8(a). ''Known to or reasonably ascertainable by'' means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. The ''known to or reasonably ascertainable by'' standard is applicable to the information required under § 710.52(c)(1), (c)(2), and (c)(3) of the regulatory text.

''Readily obtainable'' is a lesser standard EPA is applying to the reporting of information concerning the processing and use of chemicals subject to IURA (§ 710.52(c)(4) of the regulatory text). The readily obtainable standard is limited to information known by management and supervisory employees of the submitter, and does not require additional effort to collect information on processing or use of chemicals by others not under the control of the submitter. Although the Agency is requiring submitters to provide only information that it knows, EPA believes that in many cases submitters will possess some knowledge concerning use of chemicals sold by the submitter to their customers, even though the submitter does not control its customers' sites. For example, when a company markets the substances for certain end uses. EPA's experience with over 30,000 TSCA section 5 PMNs demonstrates that companies generally do know the intended ultimate use, as well as intervening processing steps, of their products. In choosing the readily obtainable standard, the Agency is lessening the burden on submitters compared to the ''known to or reasonably ascertainable by'' standard, while recognizing that the submitter is supplying data on uses of chemicals that are beyond his or her control. The standard for reporting information on processing and use of chemical substances under IURA is the same as the standard adopted in the PAIR, which was also promulgated under the authority of TSCA section 8(a). (See 40 CFR 712.7)

E. Confidential Business Information

The Agency's intent under these regulations is to achieve balance and ensure that the submitter only claims as confidential that information which is legally entitled to confidential treatment. EPA believes that these amendments will discourage the assertion of invalid CBI claims by focusing submitter's attention more closely on their decision to make certain claims.

1. *General CBI*.—a. *Reducing the amount of CBI claims*. EPA solicited suggestions from commenters on what could be done to the IUR reporting process and data elements to reduce CBI claims, thereby allowing better public access to the data. Some commenters suggested that EPA is trying to discourage legitimate CBI claims by making assertion of such claims overly burdensome. Some commenters stated that the new data elements that are being added by these amendments raise significant CBI concerns and that IURA can be expected to result in a significant increase in the number of legitimate CBI claims.

EPA agrees that submitters will make CBI claims for the new data elements that are being added by these amendments, most likely resulting in a greater number of CBI claims overall. However, EPA is requiring reporting for most of the new data elements in ranges, a reporting method EPA believes will result in fewer CBI claims compared to reporting discrete numbers. Additionally, EPA is amending the IUR to encourage the assertion of only legally valid CBI claims, and to ensure that CBI claims are well thought out by the submitter. The IURA includes a new requirement to provide upfront substantiation of CBI claims for site identity. This requirement will minimize claims by prompting submitters to perform an initial evaluation of the need for and validity of a CBI claim for plant site identity, an essential data element. These efforts will greatly assist in limiting CBI claims to those that are legitimate.

EPA wishes to clarify that it is not attempting to discourage legitimate confidentiality claims; rather, the Agency intends only to discourage inappropriate claims. This allows the Agency to protect legitimate CBI while also increasing the amount of information available for public use.

EPA has information indicating the existence of inappropriate or no longer valid CBI claims. For instance, when EPA has selectively challenged CBI claims in the past, many of these claims have been amended by the companies to make the information available to the public. Additionally, OPPT's administrative record 00125, which contains state CBI data reviews, published articles, industry letters, and other papers discussing CBI issues, provides further indication that inappropriate or no longer valid CBI claims exist. For instance, the Georgia Department of Natural Resources reported in a 1996 CBI Data Review that IUR data identified as confidential was available in other non-confidential data bases (Ref. 37). The administrative record is in the same location as the Docket and is available by following the procedures identified in Unit I.B.1.

Some commenters suggested reducing the number of data elements that will be collected under IURA, perhaps using instead a format such as the one used by OECD for SIDS chemicals, which aggregates information for all manufacturers and thus protects company-specific information. EPA considered alternate reporting formats with different data elements, and has determined that the reporting of site-specific information by the individual sites is the best way to collect the information needed. EPA will continue to perform the aggregating function when providing the public with information that is subject to a site-specific CBI claim. Collecting only national aggregate values would drastically reduce the usefulness of the information to the Agency, even though it may reduce the number of CBI claims. The IUR is used to address both national needs and local issues. For example, IUR production volume information was used to identify the national list of High Production Volume (HPV) chemicals for the Agency's HPV Challenge Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm). Moreover, site-specific IUR information is used to secure a better overall understanding of activities at individual sites. This information is used for site-specific risk assessments for the use of federal, state and local entities.

b. *Protection of CBI*. Some commenters expressed concern about the Agency's ability to protect against the inappropriate release of CBI and stated that, under section 14 of TSCA, EPA has a statutory obligation to protect information properly claimed as CBI. These commenters are concerned about past releases of information claimed as confidential, and would like to see the Agency take steps to guarantee greater protection of CBI data.

EPA agrees that it has a statutory obligation to protect information

properly claimed CBI and is continually involved in exploring ways to better protect such information. In this light, these amendments reflect the Agency's efforts to assure that information it protects qualifies for that protection under the established legal standards. The new IURA requirements will help assure that EPA's system of information protection is limited to valid claims.

c. *Production volume ranges*. EPA requested comment on the use of production volume ranges as a mechanism to reduce the number of confidentiality claims by allowing characterizations of site-specific chemical and specific production volume information without releasing CBI. In general, commenters felt that the use of the ranges would not necessarily result in reduced CBI claims. Commenters cited a few examples where production volume would still be claimed CBI, including information reported in ranges. Other commenters suggested using broader ranges.

Despite these comments, the Agency has determined that it is worthwhile to require submitters to consider whether their production volumes, within ranges similar to those used for the original TSCA Inventory, warrant protection as CBI (EPA made adjustments to the original TSCA Inventory ranges by making the ranges consistent with the second reporting threshold of 300,000 lbs., as described in Unit II.F.5.d.). EPA recognizes that some submitters will make CBI claims for both the specific and the ranged production volume information. However, EPA believes that in many cases submitters will allow the release of ranged production volume information. This belief is supported by some industry organizations. For example, in a 1993 letter, a company suggested the use of the original Inventory production volume ranges for non-confidential reporting. While the company did state that ''conceivably, a submitter could be able to justify a CBI claim for a range,'' the conclusion was that many companies would be satisfied with non-confidential reporting (Ref. 11). These conclusions are further supported by EPA's experience with the original TSCA Inventory, where only 35% of production volume values reported were claimed CBI, compared to the typical claim level of 65% for production volumes under IUR.

d. *Disclosing customer confidential information*. A commenter expressed concern that, as a producer of chemical feedstocks, they might inadvertently report customer data and not claim the data as CBI, while their customer reports the same data and does claim the data as CBI.

EPA does not believe that this will be a significant issue. The downstream processing and use information that some submitters will be required to provide under IURA is not tied to customer identities. Submitters will not report where or who their customers are or how much their individual customers produce. In addition, CBI claims can be made as necessary for any information provided on Form U.

2. *Upfront substantiation*.—a. *Authority for substantiation*. A commenter stated that the plant site identity substantiation requirement is not authorized under TSCA. Another commenter felt that requiring upfront substantiation is overly burdensome and an arbitrary exercise of authority. The commenter stated that substantiation should only be required if and when a request for public disclosure is made, and substantial and reasonable need are demonstrated.

Under TSCA section 14(c), ''a [confidential] designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.'' EPA is continuing to require that those reporting under IURA substantiate their chemical identity CBI claims, and is requiring under these amendments that submitters also substantiate any plant site identity CBI claims. Section 710.58 of the regulatory text requires submitters to substantiate these claims submitted under IUR by providing answers to specified questions. EPA has long required upfront substantiation for specified CBI claims under the authority specified in TSCA (see, e.g., 40 CFR 710.38(c) of the current regulatory text) and will continue to require upfront substantiation where appropriate.

The Agency is adding upfront substantiation requirements for plant site identity information because EPA has observed that, on occasion, plant site information has been claimed as confidential even though, for example, it was revealed in filings required under sections 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. sections 11021 to 11023. EPA believes that many of these CBI claims are inappropriate and that the new substantiation requirement will reduce the occurrence of inappropriate claims. A decrease in the number of CBI claims under the new substantiation requirement would facilitate EPA's ability to make current plant site information available to other Federal agencies and the public because more information submitted under IUR could be released publicly.

Upfront substantiation of CBI claims imposes some additional burden, although this burden is not substantial. EPA's economic analysis for this rule estimates 0.2 to 0.3 hour per plant site reporting under IURA for the incremental costs of reporting all elements of plant site identity information. The burden of upfront substantiation for plant site identity CBI claims is included in this estimate.

b. *Alternate substantiation questions*. One commenter suggested a simplified set of substantiation questions, consisting of two questions: (1) Are the specified data confidential? and, (2) In as much detail as possible, explain why this information should be given CBI protection.

EPA believes that requiring responses to the list of substantiation questions in § 710.58 of the regulatory text is necessary to ensure that information submitted for confidential protection qualifies for that protection. The commenter's proposed questions, while providing the opportunity for a submitter to express its business reasons and preferences regarding the information, do not provide all of the necessary information to definitively evaluate the eligibility of the information for confidential treatment.

3. *Reassertion*. EPA received a number of comments regarding the proposed new CBI reassertion provisions. All of these comments were opposed to the proposed new requirement. Some comments expressed the position that reassertion is overly burdensome and even punitive, requiring submitters to retrace old steps by answering all the original substantiation questions anew. Commenters were concerned that reassertion could possibly require the retention of voluminous old records. Others felt the proposed standards would violate the Agency's obligation under TSCA to protect confidential information and that EPA would exceed its authority if it required the reassertion of CBI claims.

EPA has considered these industry comments, and weighed the concerns expressed against the public's need for access to information on chemicals in commerce in the United States. While the Agency believes the requirement to reassert old claims of CBI is justified as a practical measure to ensure that information withheld meets the legal criteria and that the expressions of concern relating to burden associated with reassertion, appear to be the result of a misunderstanding of the practical aspects of the proposed reassertion requirement, the Agency is not finalizing the proposed reassertion

requirement. EPA has made this decision in an effort to reduce the overall burden of these amendments.

F. Administrative Comments

1. *Frequency of reporting*. Several commenters stated that one-time reporting of IURA information would be more appropriate in most cases for the intended purposes expressed by EPA. In general, commenters stated that EPA could use tools such as PAIR to identify changes in a particular chemical's exposure or use profile at the time the Agency decides to do a risk analysis for that chemical (see Unit III.A.3.). A few commenters stated that there is insufficient change in the chemical industry to warrant recurring reporting of IURA information, especially for higher volume chemicals.

EPA's experience with past IUR reporting demonstrates that the chemical industry is dynamic, with a 30% change in the number of chemicals reported from one submission period to the next. The specific chemicals that are reported or not reported in any single submission period change at a variety of production volumes; this change is by no means limited to lower production volume chemicals.

Although a chemical's hazards may be fully characterized, EPA needs up-to-date exposure information to stay current with developments and adequately screen chemicals for possible risks to human health and the environment. While the toxicity of a chemical does not change (although new information can modify the assessment or identify new concerns), a chemical's exposure profile can vary greatly over time. Human and/or environmental exposures to the substance can at one time be minor, but as uses change from industrial applications to consumer uses, or as production volumes increase, exposures also tend to increase. Because exposures and uses can and do change over time as technologies develop or innovations arise, updated exposure information is needed to maintain an adequate understanding of current exposures. EPA did consider one-time reporting for IURA processing and use data, but the information would quickly become out of date.

A primary goal of IURA is to provide a data base of exposure-related information which can be used for screening level purposes to identify chemicals for further assessment, as well as chemicals of lesser concern (see Unit III.A.1.). EPA intends to use other data sources and collection tools, as appropriate, once a chemical has been identified as a candidate for further assessment.

2. *Calendar year reporting*. One commenter stated that the requirement to report data on a calendar year basis instead of a company fiscal year basis would increase systems development needs for companies who report their manufacturing volume on a fiscal year versus a calendar year (by creating the need for a second tracking system), while adding no additional value or accuracy in the reporting of manufacturing data. This commenter pointed out that because the most that companies' fiscal years can differ from a calendar year is 6 months and IUR reporting occurs every 4 years (instead of every year), there can be little difference in the data with a maximum 6–month time frame shift. Other commenters supported the change to a calendar year basis, supporting the idea of having a consistent time frame to better enable linkages with other data bases.

EPA has retained the calendar year reporting cycle as proposed. By moving the collection to a calendar year basis, the IURA data collection becomes more compatible with other data bases such as the TRI. This compatibility increases the usefulness of the IURA collection by allowing IURA data to be combined with data from other collections. Generally, companies should be sufficiently familiar with their production that this provision should not present special challenges that are unaccounted for in the burden estimates provided by survey respondents, as described in the economic analysis.

G. Economic Impact Estimates

Commenters raised a number of concerns about the economic analysis. In response, EPA has made a number of changes to make the analysis a more readable document and to incorporate changes made to the final IURA requirements.

1. *General burden comments*. Commenters raised a variety of concerns about the size of the burden associated with the amendments, and EPA's estimates of that burden. In general, commenters felt that the Agency's burden estimates were too low. However, few commenters provided evidence as to why they felt EPA underestimated the burden, and none provided any specific analytical basis for amending the estimates. Some commenters claimed that the revised form represents a 5-, 10-, or 30–fold increase in burden, at least partly based upon the fact that the original Form U was only 1 page and the sample revised Form U provided in the proposed rule was 3 pages.

In response to these comments, EPA reviewed the burden analysis and, although the estimated burden was adjusted, determined that the comments do not warrant modifications to the Agency's general approach to the analysis. EPA based much of the burden analysis on a survey of 78 industry respondents (Ref. 7). In addition, EPA considered the burden associated with such programs as the UEIP (described in Unit III.A.1.), a voluntary project in which EPA collected information similar in some ways to IURA information. UEIP respondents provided estimates of the amount of time they used to complete the survey forms (Ref. 7). However, EPA did reassess the results of the burden survey and did make some changes to the analysis. The burden from the analysis associated with the proposed rule was $36 to $51 million in the first year, and $27 million to $41 million in future reporting years. Changes in the rule and methodology raised estimated costs of the final rule to between $72 and $87 million in the first reporting cycle, and $64 to $77 million in future reporting cycles. These changes are primarily due to revising the analysis from the survey data, revising the analysis to remove the reassertion burden, updating costs to year 2000 dollars, and updating the number of report submissions to incorporate the 1998 IUR data collection. These changes are discussed further in ''Revised Economic Analysis for the Amended Inventory Update Rule'' (Ref. 7).

a. *Burden over time*. Commenters raised concerns about specific burden issues. Several commenters felt that burden associated with IURA will not decrease over time because of the 4–year time lapse between submission periods. Those commenters believe that the 4–year period between submission periods will result in changes to product lines and personnel such that a complete reintroduction to IUR reporting will be necessary in each reporting cycle. EPA disagrees, and expects rule familiarization to require the most effort in the first year of reporting. EPA believes that there will be some similarity in the information reported from one submission period to the next, especially for Parts I and II of the revised Form U. Subsequent reporting will be facilitated by the site's maintenance of its previous submission period's records.

b. *Characterization of burden reduction*. Commenters asserted that the economic analysis for the proposed rule was misleading in its characterization of

the actions that constitute burden reduction and cost savings. Specifically, commenters referred to EPA's claim of a burden reduction and cost savings associated with the 300,000 lbs. threshold for reporting of Form U, Part III information on industrial processing and use, and consumer and commercial use. EPA simply meant that providing a partial exemption for chemicals below the 300,000 lbs. threshold is a concession to the burden that the rule imposes on reporting sites, and that the Agency has no other basis for this exemption other than to mitigate the increase in burden. EPA presented a similar discussion comparing options considered under the rule for other partial reporting exemptions such as the petroleum streams exemption. These discussions are put into the appropriate context in the economic analysis. A commenter also took issue with the fact that EPA asserts that reporting processing and use information on the top 10 NAICS codes will reduce costs (versus reporting on an unlimited number of NAICS codes), given that identifying these top 10 could take considerable effort. EPA continues to believe that reporting only the top 10 NAICS codes will be less burdensome than reporting all NAICS codes associated with industrial processing or use operations.

2. *Cost comments*. Two commenters asserted that compliance costs for chemicals manufactured in amounts below the 25,000 lbs. threshold are not zero and that, as production volume for a chemical approaches the threshold, tracking costs will accrue to determine if production will cross the threshold.

Compliance determination (the act of determining the need to comply with a regulation) occurs on a per-site basis. This means that all sites that report under IURA are assumed to incur the same average cost for determining compliance, regardless of the number of chemicals reported. Some small number of firms that are not required to report may incur some negligible costs in this regard, but EPA believes the costs to be relatively small given that it is standard business practice for a company to be aware of the volumes it produces. The existence of voluntary submitters does not imply that below-threshold compliance costs are non-zero; it simply indicates that some firms choose to respond to IUR when reporting is not required.

Another commenter determined that member companies in its organization would experience no savings from raising the threshold from 10,000 lbs. to 25,000 lbs. as no reports are eliminated. In 1994, EPA received approximately 3,800 reports for chemicals produced in quantities between 10,000 and 25,000 lbs. As a result, the Agency anticipates that a significant number of reports will be eliminated by raising the reporting threshold.

3. *Benefits comments*. Commenters stated that EPA has overestimated the benefits of this rule and should quantify the benefits. However, given that IURA is an information rule and its benefits are therefore indirect, it is currently not possible to quantify the benefits of the rule. Only by collecting the information required under the IURA can EPA begin to assess thoroughly the risks from a portion of the more than 76,000 chemicals in commerce. The actions that result from EPA review of the IURA data will have direct health and environmental benefits, benefits that typically can be quantified. Commenters offered no alternate assessment, quantitative or otherwise, of the benefits from IURA. In the absence of quantified benefit figures, it is impossible to make simple comparisons to estimates of reporting costs. Thus, EPA must balance the needs of the Agency for data with which to address important environmental and health risks, with the burdens of obtaining such data. In doing so, the uses of and need for the data are carefully addressed both within the Agency, and during interagency review. EPA has made every attempt to collect only the information necessary to meet Agency goals for obtaining screening level exposure-related information.

4. *Small business impact comments*. Several commenters argued that EPA's analysis of the impacts of IURA on small businesses is insufficient to meet the requirements of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. EPA's analysis of small business impacts fully complies with the RFA, as amended. For rules subject to the RFA, the Agency is required to undertake specific actions (such as preparing an initial regulatory flexibility analysis and convening a small business advocacy review panel) unless it certifies that the rule will not have a significant impact on a substantial number of small entities. EPA prepared a thorough small entity analysis that meets the requirements of the RFA. The analysis for the final rule can be found in the ''Revised Economic Analysis for the Amended Inventory Update Rule'' (Ref. 7). For both the proposed and final rules, EPA certified that there will not be a significant impact on a substantial number of small entities. A summary of the analysis and the certification can be found in Unit V.B.

5. *Non-regulatory alternatives*. Commenters also stated that EPA did not identify any non-regulatory alternatives and failed to assess the relative costs and benefits of an alternative approach. In the economic analysis for the proposed rule, the Agency did not specifically identify non-regulatory alternatives to the reporting requirements. However, the Agency did consider non-regulatory alternatives and has added a discussion to the economic analysis.

The Agency primarily considered two non-regulatory alternatives. First, the Agency considered using publicly available information, as discussed in Unit III.A.3. The Agency found that the information to be collected through IURA was not publicly available and therefore this was not a viable option. Second, the Agency considered a voluntary approach to collecting this information, similar to the UEIP collection discussed in Unit III.A.1. However, information collected through a voluntary program may lack consistency, may not be sufficiently comprehensive, or may not occur on a recurring basis, and therefore would not fully serve the purposes of IURA information. Therefore, a voluntary approach was not a viable option.

IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking has been established as described in Unit I.B.1. under docket ID number OPPT–2002–0054. This record includes the documents located in the docket as well as the documents that are referenced in those documents. The following is a listing of the documents that are specifically referenced in this final rule. These documents, and the documents referenced therein, are also included in the public version of the official record. Please note that some referenced documents are already publicly available and this list includes the relevant location information.

1. U.S. EPA, ''Reducing Risk: Setting Priorities and Strategies for Environmental Protection,'' Science Advisory Board, (SAB-EC-90-021), 1990.

2. National Academy of Public Administration, ''Setting Priorities, Getting Results - A New Direction for EPA,'' 1995.

3. Chemical Manufacturers Association, Synthetic Organic Chemical Manufacturers Association, U.S. EPA, Chemical Specialties Manufacturing Association, American Petroleum Institute, ''Round 3 of the

UEIP (Use and Exposure Information Project),'' June 3, 1996.
4. American Petroleum Institute, ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA),'' Health and Safety Regulation Committee Task Force on Toxic Substances Control, February 1985.
5. USEPA, ''Methodology Used for the Initial Selection of Chemicals for the Inventory Update Rule Amendments (IURA) 'Low Current Interest' Partial Reporting Exemption,'' OPPT, July 24, 2002.
6. USEPA, ''EPA Needs Exposure-Related Data: A Discussion of the Justification for Collecting Exposure-Related Data Through the IUR Amendments,'' OPPT/EETD/EPAB, 1998.
7. USEPA, ''Economic Analysis for the Amended Inventory Update Final Rule,'' OPPT, August 2002.
8. USEPA, ''Incremental Cost Estimates for IURA: Interagency Review Comparison and Five Year Reporting Cycle,'' OPPT/EETD/EPAB, July 17, 2002.
9. USEPA, ''Draft Instructions Manual for the 2006 Inventory Update Rule Reporting,'' OPPT, August 2002.
10. USEPA, ''Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information,'' OPPT, August 26, 1996.
11. Letter from Mark N. Duvall, Union Carbide, to EPA, ''Additional Comments of Union Carbide Corporation on EPA's Preliminary Actions to Reform TSCA Confidential Business Information, Docket No. OPPTS–00125,'' August 31, 1993.
12. Letter from Stephen A. Newell, Occupational Safety and Health Administration, to Wardner G. Penberthy, EPA, October 15, 1996.
13. Letter from Paul A. Schulte, Ph.D., National Institute for Occupational Safety and Health, to Wardner G. Penberthy, EPA, October 8, 1996.
14. USEPA, ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' Volumes 1 and 2, OPPT, July 19, 1996.
15. U.S. Census Bureau, North American Industrial Classification System (NAICS), http://www.census.gov/epcd/www/naics.html, 1999.
16. USEPA, ''Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis,'' OPPT, September 26, 1996.
17. Standard Consumer Safety Inspection ASTM F963-96A (sec. 3.1–3.3).
18. USEPA, ''Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments (64 FR 46772),'' OPPT/EETD, September 6, 2002.
19. USEPA, ''IURA Data Use Plan,'' OPPT/EETD, August 23, 2002.
20. USEPA, ''A SAB Report: Improving the Use Cluster Scoring System, Recommendations for the Use Cluster Scoring System Prepared by the Environmental Engineering Committee,'' Science Advisory Board, SAB-EEC-95-017, September 1995. Also available at www.epa.gov/sab/pdf/eec95017.pdf.
21. Letter from Michael A. Babich, U.S. Consumer Product Safety Commission, to Wardner G. Penberthy, EPA, June 24, 1996.
22. Letter from Robert Franklin, U.S. Consumer Product Safety Commission, to EPA, December 23, 1999.
23. Letter from Paul A. Schulte, Ph.D., National Institute for Occupational Safety & Health, to EPA, December 21, 1999.
24. General Accounting Office, ''Toxic Chemicals: Long-Term Coordinated Strategy Needed to Measure Exposures in Humans,'' GAO/HEHS-00-80, May 2, 2000.
25. Letter from Linda Greer, Ph.D., Natural Resources Defense Council, to Carol Browner, EPA, February 12, 1999.
26. USEPA, ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' OPPT/EETD/EPAB, March 1, 1999.
27. USEPA, ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA,'' OPPT, March 1999.
28. European Commission, ''Technical Guidance Document in Support of Commission Directive 93/67/EEC on Risk Assessment for New Notified Substances and Commission Regulation (EC) No 1488/94 on Risk Assessment for Existing Substances; Part III.''
29. USEPA, '''Inventory Update Rule (IUR) Technical Support Document: Selection of Consumer and Commercial End-Use Categories,'' OPPT, 1996.
30. Letter from the TSCA Interagency Testing Committee providing a response to an Interagency proposed rule review question, undated.
31. Letter from John DeYoung, Chief Scientist, U.S. Geological Survey, to Mary Ellen Weber, EPA, July 25, 2002.
32. USEPA, ''Inorganic Chemicals: Sources of Information Suggested by Commenters to the Proposed Inventory Update Rule Amendments,'' OPPT, June 2000.
33. Memorandum from Sandy Zavolta, U.S. EPA, to Heidi King, Office of Management and Budget, May 21, 1999.
34. OECD, ''Guidance for Collection and Transmission of Exposure Information for SIDS Initial Assessment,'' OECD SIDS Manual (Third Revision), Section 2.5, July 1997, available at http://www.epa.gov/opptintr/sids/sidsman.htm.
35. USEPA, ''Report to Congress: Wastes from the Combustion of Fossil Fuels (EPA Docket #F–2000–FF2F–FFFFF) Public Comment Summary and Response Document,'' OSW, April 25, 2000, available at http://www.epa.gov/epaoswer/other/fossil/ffc-resp.pdf.
36. General Accounting Office, ''EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances,'' GAO/RCED-95-165, July 7, 1995.
37. Confidential Business Information Data Review, Georgia Department of Natural Resources, Docket entry 00125 B2a-010 filed June 19, 1996, page 4.

V. Statute and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this is a ''significant regulatory action'' under section 3(f) of the Executive Order, because it raises ''novel legal or policy issues arising out of legal mandates'' relating to information collection. This action was therefore submitted to OMB for review under this Executive Order, and any comments or changes made during that review have been documented in the public record.

In addition, EPA has prepared an economic analysis of the potential impacts of this action, which is contained in a document entitled *Economic Analysis for the Amended Inventory Update Rule* (Ref. 7). The Agency, in promulgating this rule, is required under TSCA to consider the potential costs and benefits associated with IURA. The analysis was therefore used by the decision-makers to help in the selection of the final rule requirements presented in this document. This document is available as a part of the public version of the official record for this action and is briefly summarized here.

EPA estimates that these amendments will cost between $72 and $87 million in the first reporting cycle, and $64 to

$77 million in future reporting cycles, resulting in an annualized cost of $17 to $21 million over the next 20 years at a 3% discount rate, and $19 to $22 million at a 7% discount rate.

Under these amendments, approximately 8,900 chemicals will be subject to reporting, and the Agency expects that it will receive approximately 26,800 submissions during the first submission period. In the first submission period, approximately 9,800 of those submissions (providing information on about 4,000 chemicals) will be full reports which include information found in Part III of revised reporting Form U. The remainder will report only company, site and chemical identification and manufacturing information (Parts I and II of revised Form U). In future submission periods with the addition of full reporting for inorganic chemicals, EPA expects to receive over 12,300 full forms, covering 4,600 chemicals. In order to keep the reporting burden as low as possible, EPA is requiring that certain information be reported in ranges, that only the top 10 NAICS codes be accounted for when reporting industrial processing and use information, and that only readily obtainable information in Part III of revised Form U be reported.

EPA analyzed the effects of a number of different alternatives for the rule, including variations in exemptions, different thresholds for both partial- (i.e., Parts I and II of revised Form U) and full-form (i.e., all parts of revised Form U) reporting, and various frequencies of collection. These options are explored further in the Economic Analysis (Ref. 6).

EPA considered continuing the existing full exemption from IUR reporting for inorganic chemicals and adding a full exemption for site-limited petroleum streams. EPA examined the effects of keeping the partial-form threshold at 10,000 lbs. and considered full-form thresholds of 100,000, 300,000, 500,000, and one million lbs., as well as a phased-in 100,000/500,000 full-form threshold. EPA also considered changes in the reporting cycle, such as a one-time collection, and a 2–year cycle.

EPA believes that this final rule represents an appropriate balance between the burden placed on industry to provide information and the Agency's need for that information to fill its statutory obligations and fulfill its mission under TSCA and, as part of that mission, to provide information needed by other agencies (OSHA, NIOSH, CPSC, etc.).

The costs of these amendments will be borne by two groups: the chemical industry and EPA. Industry costs are associated with complying with the regulation, while EPA costs are associated with administering the regulation and maintaining the collected data. In this rulemaking effort, EPA has made every attempt to balance data needs with collection costs and burden. Wherever possible, EPA has used exemptions or partial exemptions to reduce the number of reports that would potentially be filed by industry. EPA has provided a second threshold for reporting use information required in Part III of revised Form U, reducing the per report burden for submitters. Recognizing that this information will be used for screening level purposes, EPA has reduced the specificity of the information that will be required in three ways: (1) By requiring the reporting of only readily obtainable information for the processing and use exposure-related data; (2) by requiring that submitters report much of the information in ranges, reducing the need to generate specific estimates; and, (3) by requiring processing and use exposure-related information on only the top 10 uses/NAICS codes/IFCs, as determined by percent of the chemical's volume. These steps limit the amount of information required, reducing the time and effort spent by the chemical industry in complying with the amendments.

EPA assumes that the burden associated with reporting under IURA will decrease over time as industry's familiarity with the reporting rule increases and to the extent that the information being reported remains somewhat constant from one submission period to the next. Projected costs to EPA are relatively small and are estimated to be $576,000 in the first reporting year, and $270,000 in subsequent reporting years.

Substantial changes in the economic analysis have occurred since the economic analysis produced for the proposed rule, which is summarized in Unit XI. of the proposed rule (at 64 FR 46799). The economic analysis was revised primarily due to changes in the final rule and changes to the cost methodology that more fully reflect potential industry burden. The revised economic analysis in support of this final rule can be found in the public version of the official record for this rulemaking (Ref. 6).

Changes made since the proposal due to public comments or interagency review include deleting the average concentration data element, phasing-in full reporting for inorganic chemicals, adding a partial exemption for specific chemical substances for which the Agency has determined that the IURA processing and use information is of low current interest, and deleting the proposed CBI reassertion requirement. Changes made to the cost methodology include increasing burden estimates for reporting processing and use data. The increase in burden estimate was initiated in response to industry comment, and stemmed from differences in the survey instrument used to estimate costs of IURA in 1996, and the sample Form U in 1999.

Estimates for reporting processing and use data were revised upward after reviewing public comments and the survey data. Differences between the survey instrument and the proposed Form U required EPA to aggregate certain responses. After reading the comments, EPA is using more conservative assumptions in this process. Therefore, it is more likely that EPA cost estimates overestimate, rather than underestimate, actual costs.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0162. In accordance with the procedures at 5 CFR 1320.11, EPA submitted an Information Collection Request (ICR) document to OMB in 1999 (identified as EPA ICR No. 1884.02), which is also included in the public docket that is described in Unit I.B.1.

The information that will be reported under IURA will better enable EPA to screen thousands of chemical substances for potential risk. Risk screening is necessary in order to conserve limited Agency and industry resources by focusing risk assessment work on chemical substances for which some level of potential risk has been indicated. The new information that will be reported under this rule is critical to the risk screening process and is unavailable through other sources. Responses to this collection of information will be mandatory, pursuant to TSCA section 8(a), 15 U.S.C. 2607(a). The regulations codifying the reporting requirements appear at 40 CFR part 710. CBI claims may be made for all or part of the information that will be reported under IURA. This action includes new substantiation procedures for CBI claims regarding plant site identity (See § 710.58(d) in the regulatory text).

As a result of IURA, reporting sites will submit either a full report for a

chemical (which includes site identification, manufacturing information and processing and use data) or a partial report (which does not include processing and use data). For the first reporting cycle, inorganic chemical manufacturers will only submit partial reports while organic chemical manufacturers will submit a mix of partial and full reports. The IURA increases the average reporting burden for both partial and full reports compared to previous IUR reporting.

Companies will continue to report under IURA once every 4 years, so the average annual IURA reporting burden and cost is calculated in the ICR as one quarter of the burden and cost in a reporting cycle. Thus, the results in the ICR differ slightly from those in the economic analysis prepared under Executive Order 12866, which calculates the annualized cost of multiple reporting cycles over a 20–year period. In addition, the economic analysis calculates the incremental increase in burden due to IURA, while the ICR calculates the total reporting and recordkeeping burden for IURA (i.e., the sum of the incremental IURA burden and the baseline IUR burden). Companies may continue to report for multiple chemicals on a single Form U (as revised). Companies generally submit one Form U per site, so the burden per Form U is approximately equivalent to the burden per site.

For the first reporting cycle, the annual average burden for organic chemical manufacturers is estimated to be 121.5 to 152.4 hours per site at a cost of $8,313 to $10,448 (reflecting an average of 5.1 partial reports and 3.8 full reports per site). For inorganic chemical manufacturers, the annual average burden is estimated at 43.3 to 66.1 hours per site at a cost of $2,936 to $4,547 (reflecting an average of 8.3 reports per site). These estimates include the time needed to review instructions; search data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific site may be different from this estimate depending on the complexity of the site, the number of IURA reportable chemicals at the site, and the profile of the site's operations. There will be approximately 2,500 submitters for organic chemicals (including petroleum process streams), and 500 submitters for inorganic chemicals. For the first reporting cycle, the total annual burden is estimated to be approximately 325,000 to 414,000 hours at a total estimated industry cost of $22.2 to $28.4 million per year.

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

As part of the PRA approval renewal process, which occurs every 3 years and includes an opportunity for public review and comment prior to OMB review, EPA intends to evaluate this collection activity, particularly the new exemption process, in order to demonstrate the practical utility of IURA information collection activities. The Agency will provide information in the ICR renewal document that details the chemicals evaluated under the exemption process, the exemption requests received, and the Agency's decisions made, as well as provide information about the process elements and experiences.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The currently approved ICR control numbers issued by OMB for various EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without further notice and comment.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 6), and is briefly summarized here.

Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions (5 U.S.C. 601(6)). Because not-for-profit organizations and governmental jurisdictions will not be affected by this rule, ''small entity'' for purposes of this final rule is synonymous with ''small business.'' Section 601(3) of the RFA establishes as the default definition of small business the definition used in section 3 of the Small Business Act (15 U.S.C. 632) under which the Small Business Administration (SBA) establishes small business size standards (13 CFR 121.201). The RFA recognizes, however, that it may be appropriate at times for Federal agencies to use an alternate definition of small business. As a result, RFA section 601(3) provides that an Agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. EPA established a different definition of small business, found in the existing IUR at 40 CFR 704.3, in accordance with these requirements. Manufacturers who meet the 40 CFR 704.3 definition of small business are generally exempted from IUR reporting in 40 CFR 710.29. This exemption is retained under these amendments in § 710.49 and was not reopened for comment. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency.

Despite the fact that small manufacturers that fully meet the 40 CFR 704.3 definition are generally exempt from reporting under IUR, and thus are not significantly impacted by IURA, EPA conducted an analysis of the potential impact for submitters that meet only part of the 40 CFR 704.3 definition. Specifically, an analysis of the potential impact was conducted only for those submitters that meet the first criterion in the 40 CFR 704.3 definition of ''small manufacturer or importer,'' i.e., total annual sales of less than $40 million, but that do not meet the second criterion, i.e., production or import volume of less than 100,000 pounds at all sites.

For small manufacturers of organic chemicals subject to reporting, the Agency estimates the impact to be 0.15% to 0.18% of sales. For small manufacturers of inorganic chemicals subject to reporting, the Agency estimates the impact to be 0.07% to 0.20% of sales.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. The analysis of the costs associated with this action are described in Unit V.A. In addition, EPA has determined that this rule does not significantly or uniquely affect small governments. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

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

This final rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Orders 13084 and 13175

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date. EPA developed this rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

G. Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final rule modifies the existing IUR reporting and recordkeeping requirements that apply to chemical manufacturers and importers. As such, we have concluded that this rule is not likely to have adverse energy effects.

H. Executive Order 13045

This rulemaking does not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more and it does not have a potential effect or impact on children. As discussed in this preamble, this rule will provide the Agency with information needed to screen and prioritize chemical substances, including information on potential exposures to children. This information will allow the Agency and others to determine which chemical substances have potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

I. National Technology Transfer and Amendment Act

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

J. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. The Agency believes that the information collected under this rule will assist EPA and others in determining the risks and exposures associated with the chemicals covered by the rule. Although not directly impacting environmental justice-related concerns, this information will enable the Agency to protect human health and the environment by being better able to prioritize chemical substances of concern.

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with*

Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

L. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, titled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

VI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 723

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: December 18, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

1. Part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

b. In § 9.1, the table is amended by revising the heading ''Inventory Reporting Regulations'' to read ''TSCA Chemical Inventory Regulations''; removing the existing entry under the heading; and adding the following entries to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* *	* * *
TSCA Chemical Inventory Regulations	
Part 710, Subpart B.	2070–0070
Part 710, Subpart C.	2070–0162
* *	* * *

* * * * *

2. Part 710 is amended as follows:

PART 710—[AMENDED]

a. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Revise the part heading and table of contents for part 710 to read as follows:

PART 710—TSCA CHEMICAL INVENTORY REGULATIONS

Subpart A—General Provisions

Sec.

710.1 Scope and compliance.
710.3 Definitions.
710.4 Scope of the inventory.

Subpart B—2002 Inventory Update Reporting

710.23 Definitions.
710.25 Chemical substances for which information must be reported.
710.26 Chemical substances for which information is not required.
710.28 Persons who must report.
710.29 Persons not subject to this subpart.
710.30 Activities for which reporting is not required.
710.32 Reporting information to EPA.
710.33 When to report.
710.35 Duplicative reporting.
710.37 Recordkeeping requirements.
710.38 Confidentiality.
710.39 How do I submit the required information?

Subpart C—Inventory Update Reporting for 2006 and Beyond

710.43 Definitions.
710.45 Chemical substances for which information must be reported.
710.46 Chemical substances for which information is not required.
710.48 Persons who must report.
710.49 Persons not subject to this subpart.
710.50 Activities for which reporting is not required.
710.52 Reporting information to EPA.
710.53 When to report.
710.55 Duplicative reporting.
710.57 Recordkeeping requirements.
710.58 Confidentiality.
710.59 Availability of reporting form and instructions.

c. Sections 710.1 through 710.4 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—General Provisions

d. Revise § 710.1 to read as follows:

§ 710.1 Scope and compliance.

(a) This part establishes regulations governing reporting and recordkeeping by certain persons who manufacture, import, or process chemical substances for commercial purposes under section 8(a) of the Toxic Substances Control Act (15 U.S.C. 2607(a)) (TSCA). Section 8(a) authorizes the Administrator to require reporting of information necessary for administration of the Act and requires EPA to issue regulations for the purpose of compiling and keeping current an inventory of chemical substances manufactured or processed for a commercial purpose, as required by section 8(b) of the Act. Following an initial reporting period, EPA published an initial inventory of chemical substances manufactured, processed, or imported for commercial purposes. In accordance with section 8(b), EPA periodically amends the inventory to include new chemical substances which are manufactured or imported for a commercial purpose and reported under section 5(a)(1) of the Act. EPA also revises the categories of chemical substances and makes other amendments as appropriate.

(b) The regulations in this part apply to the activities associated with the compilation of the TSCA Chemical Inventory and the update of information on a subset of the chemical substances included on the Inventory. The Inventory Update regulations were

amended in 2002; however, these amendments apply to updates after 2002, not to the 2002 update. In order to prevent confusion as to which regulations apply to which update, EPA has preserved the provisions that apply to the 2002 update in subpart B. The new and revised requirements that apply to updates after 2002 appear in subpart C. Prior to January 1, 2003, the regulations in subpart B of this part are effective for purposes of Inventory update activities. As of January 1, 2003, subpart C is effective for purposes of Inventory update activities. The Agency intends to remove subpart B from the CFR once the 2002 update is complete.

(c) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under these reporting regulations. In addition, section 15(3) makes it unlawful for any person to fail to keep, and permit access to, records required by these regulations. Section 16 provides that any person who violates a provision of section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to section 17, the Government may seek judicial relief to compel submission of section 8(a) information and to otherwise restrain any violation of section 15. (EPA does not intend to concentrate its enforcement efforts on insignificant clerical errors in reporting.)

(d) Each person who reports under these regulations must maintain records that document information reported under these regulations and, in accordance with the Act, permit access to, and the copying of, such records by EPA officials.

§ 710.2 [Removed]

e. Remove § 710.2.

f. Add § 710.3 to subpart A to read as follows:

§ 710.3 Definitions.

In addition to the definitions in § 704.3 of this chapter, the following definitions apply to this part:

(a) The following terms will have the meaning contained in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under such Act: *Cosmetic, device*, *drug*, *food*, and *food additive*. In addition, the term *food* includes poultry and poultry products, as defined in the Poultry Products Inspection Act, 21 U.S.C. 453 *et seq.*; meats and meat food products, as defined in the Federal Meat Inspection Act, 21 U.S.C. 60 *et seq.*; and eggs and egg products, as defined in the Egg Products Inspection Act, 21 U.S.C. 1033 *et seq.*

(b) The term *pesticide* will have the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the regulations issued thereunder.

(c) The following terms will have the meaning contained in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et seq.*, and the regulations issued thereunder: *Byproduct material*, *source material*, and *special nuclear material*.

(d) The following definitions also apply to this part:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Administrator means the Administrator of the U.S. Environmental Protection Agency, any employee or authorized representative of the Agency to whom the Administrator may either herein or by order delegate his/her authority to carry out his/her functions, or any other person who will by operation of law be authorized to carry out such functions.

An *article* is a manufactured item:

(1) Which is formed to a specific shape or design during manufacture,

(2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and

(3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.4(d)(5); except that fluids and particles are not considered articles regardless of shape or design.

Byproduct means a chemical substance produced without separate commercial intent during the manufacture or processing of another chemical substance(s) or mixture(s).

Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical; except that ''chemical substance'' does *not* include:

(1) Any mixture,

(2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide,

(3) Tobacco or any tobacco product, but not including any derivative products,

(4) Any source material, special nuclear material, or byproduct material,

(5) Any pistol, firearm, revolver, shells, and cartridges, and

(6) Any food, food additive, drug, cosmetic, or device, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

Distribute in commerce and *distribution in commerce*, when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture, mean to sell or the sale of the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of the substance, mixture, or article after its introduction into commerce.

EPA means the U.S. Environmental Protection Agency.

Importer means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the U.S. and includes:

(1) The person primarily liable for the payment of any duties on the merchandise, or

(2) An authorized agent acting on his/her behalf (as defined in 19 CFR 1.11).

Impurity means a chemical substance which is unintentionally present with another chemical substance.

Intermediate means any chemical substance:

(1) Which is intentionally removed from the equipment in which it is manufactured, and

(2) Which either is consumed in whole or in part in chemical reaction(s) used for the intentional manufacture of other chemical substance(s) or mixture(s), or is intentionally present for the purpose of altering the rate of such chemical reaction(s).

Note: The *equipment in which it was manufactured* includes the reaction vessel in which the chemical substance was manufactured and other equipment which is strictly ancillary to the reaction vessel, and any other equipment through which the chemical substance may flow during a continuous flow process, but does not include tanks or other vessels in which the chemical substance is stored after its manufacture.

Manufacture means to manufacture, produce, or import for commercial purposes.

Manufacture or import ''for commercial purposes'' means to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture

or import of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, or

(2) For use by the manufacturer, including use for product research and development, or as an intermediate.

Mixture means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that ''mixture'' does include:

(1) Any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined and if, after the effective date or premanufacture notification requirements, none of the chemical substances comprising the combination is a new chemical substance, and

(2) Hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water.

New chemical substance means any chemical substance which is not included in the inventory compiled and published under section 8(b) of the Act.

Person means any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

Process means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(2) As part of a mixture or article containing the chemical substance or mixture.

Process ''for commercial purposes'' means to process:

(1) For distribution in commerce, including for test marketing purposes, or

(2) For use as an intermediate.

Processor means any person who processes a chemical substance or mixture.

Site means a contiguous property unit. Property divided only by a public right-of-way will be considered one site. There may be more than one manufacturing plant on a single site. For the purposes of imported chemical substances, the site will be the business address of the importer.

Small quantities for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product (hereinafter sometimes shortened to *small quantities for research and development*) means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed that:

(1) Are no greater than reasonably necessary for such purposes, and

(2) After the publication of the revised inventory, are used by, or directly under the supervision of, a technically qualified individual(s).

Note: Any chemical substances manufactured, imported, or processed in quantities less than 1,000 lbs. (454 kg) annually will be presumed to be manufactured, imported, or processed for research and development purposes. No person may report for the inventory any chemical substance in such quantities unless that person can certify that the substance was not manufactured, imported, or processed solely in small quantities for research and development, as defined in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Technically qualified individual means a person:

(1) Who because of his/her education, training, or experience, or a combination of these factors, is capable of appreciating the health and environmental risks associated with the chemical substance which is used under his/her supervision,

(2) Who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity. The responsibilities in this paragraph may be delegated to another individual, or other individuals, as long as each meets the criteria in paragraph (1) of this definition.

Test marketing means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, by a manufacturer or processor to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

United States, when used in the geographic sense, means all of the States, territories, and possessions of the United States.

§ 710.4 [Amended]

g. Section 710.4 is amended as follows:

i. In paragraphs (a), (c)(1), (c)(2), (c)(3), and the Note at the end of paragraph (d)(8), change the references to ''§ 710.2'', ''§ 710.2(h)'', ''§ 710.2(q)'', ''§ 710.2(y)'', and ''§ 710.2(n)'', respectively to ''§ 710.3(d)''.

ii. In paragraph (b)(2), change ''shall'' to ''will''.

iii. In the Note to paragraph (d)(2), change ''premanufacturing'' to ''premanufacture''.

iv. In paragraph (d)(5), change ''photographic, films'' to ''photographic films''.

h. Sections 710.25 through 710.39 are designated as subpart B and the subpart heading is added to read as follows:

Subpart B—2002 Inventory Update Reporting

i. Add § 710.23 to subpart B to read as follows:

§ 710.23 Definitions.

In addition to the definitions in § 704.3 of this chapter and § 710.3, the following definitions also apply to subpart B of this part.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Non-isolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited.

§ 710.39 [Amended]

j. Section 710.39 is amended as follows:

i. Revise the section heading to read ''How do I submit the required information?''

ii. In paragraph (a), the second sentence is revised to read: ''Copies of the Form U are available from EPA at the address set forth in paragraph (c) of this section and from the EPA Internet Home Page at http://www.epa.gov/oppt/iur/iur02/index.htm.''

iii. In the introductory text of paragraph (c), change ''1994'' to ''1998''.

iv. In paragraph (c)(1), insert a period after ''554–1404'' and remove the remainder of the sentence.

v. In paragraph (c)(3), change ''7408,'' to ''7408M,''.

vi. In paragraph (d), change ''Document Control Officer'' to ''OPPT Document Control Officer'' and change ''7407,'' to ''7407M,''.

k. Add a new subpart C to read as follows:

Subpart C—Inventory Update Reporting for 2006 and Beyond

§ 710.43 Definitions.

In addition to the definitions in § 704.3 of this chapter and § 710.3, the following definitions also apply to subpart C of this part:

Commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor).

Consumer use means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.

Industrial use means use at a site at which one or more chemical substances or mixtures are manufactured (including imported) or processed.

Intended for use by children means the chemical substance or mixture is used in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers ''yes'' to at least one of the following questions for the product into which the submitter's chemical substance or mixture is incorporated:

(1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger?

(2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger?

(3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

Known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Non-isolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Readily obtainable information means information which is known by management and supervisory employees of the submitter company who are responsible for manufacturing, processing, distributing, technical services, and marketing of the reportable chemical substance. Extensive file searches are not required.

Reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would normally include, but would not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, absorption, etc.), but excludes accidental or theoretical exposures.

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce.

Reportable chemical substance means a chemical substance described in § 710.45.

Reporting year means the calendar year in which information to be reported to EPA during an IUR submission period is generated, i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited. Although a site-limited chemical substance is not distributed for commercial purposes outside the site at which it is manufactured and processed, the substance is considered to have been manufactured and processed for commercial purposes.

Submission period means the period in which the information generated during the reporting year is submitted to EPA.

Use means any utilization of a chemical substance or mixture that is not otherwise covered by the terms *manufacture* or *process*. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.

§ 710.45 Chemical substances for which information must be reported.

Any chemical substance which is in the Master Inventory File at the beginning of a submission period described in § 710.53, unless the chemical substance is specifically excluded by § 710.46.

§ 710.46 Chemical substances for which information is not required.

The following groups or categories of chemical substances are exempted from some or all of the reporting requirements of this subpart, with the following exception: A chemical substance described in paragraph (a)(1), (a)(2), or (a)(4), or (b) of this section is not exempted from any of the reporting requirements of this subpart if that substance is the subject of a rule

proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Act, or is the subject of an order issued under section 5(e) or 5(f) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

(a) *Full exemptions.* The following categories of chemical substances are exempted from the reporting requirements of this subpart.

(1) *Polymers.* (i) Any chemical substance described with the word fragments ''*polym*'', ''*alkyd'', or ''*oxylated'' in the Chemical Abstracts Service Index or Preferred Nomenclature in the Chemical Substance Identities section of the 1985 edition of the Inventory or in the Master Inventory File, where the asterisk (*) indicates that any sets of characters may precede, or follow, the character string defined.

(ii) Any chemical substance which is identified in the 1985 edition of the Inventory or the Master Inventory File as siloxane and silicone, silsesquioxane, a protein (albumin, casein, gelatin, gluten, hemoglobin), an enzyme, a polysaccharide (starch, cellulose, gum), rubber, or lignin.

(iii) This exclusion does not apply to a polymeric substance that has been hydrolyzed, depolymerized, or otherwise chemically modified, except in cases where the intended product of this reaction is totally polymeric in structure.

(2) *Microorganisms.* Any combination of chemical substances that is a living organism, and that meets the definition of ''microorganism'' at § 725.3 of this chapter. Any chemical substance produced from a living microorganism is reportable under this subpart unless otherwise excluded.

(3) *Naturally occurring chemical substances.* Any naturally occurring chemical substance, as described in § 710.4(b). The applicability of this exclusion is determined in each case by the specific activities of the person who manufactures the substance in question. Some chemical substances can be manufactured both as described in § 710.4(b) and by means other than those described in § 710.4(b). If a person described in § 710.48 manufactures a chemical substance by means other than those described in § 710.4(b), the person must report regardless of whether the substance also could have been produced as described in § 710.4(b). Any chemical substance that is produced from such a naturally occurring chemical substance described in § 710.4(b) is reportable unless otherwise excluded.

(4) *Certain forms of natural gas.* Chemical substances with the following Chemical Abstract Service (CAS) Registry Numbers: CAS No. 64741–48–6, Natural gas (petroleum), raw liquid mix; CAS No. 68919–39–1, Natural gas condensates; CAS No. 8006–61–9, Gasoline natural; CAS No. 68425–31–0, Gasoline (natural gas), natural; CAS No. 8006–14–2, Natural gas; and CAS No. 68410–63–9, Natural gas, dried.

(b) *Partial exemptions.* The following groups of chemical substances are partially exempted from the reporting requirements of this subpart (i.e., the information described in § 710.52(c)(4) need not be reported for these substances). Such chemical substances are not excluded from the other reporting requirements under this subpart. A chemical substance described in paragraph (b)(3) of this section qualifies for a partial reporting exemption during the 2006 submission period; in subsequent submission periods, the chemical substances described in paragraph (b)(3) of this section will be subject to full reporting under this subpart (i.e., all of the information described in this subpart must be reported), unless otherwise exempted.

(1) *Petroleum process streams.* EPA has designated the following chemical substances, listed by CAS Number, as partially exempt from reporting under the IUR.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED ''PETROLEUM PROCESS STREAMS'' FOR PURPOSES OF INVENTORY UPDATE REPORTING

CAS No.	Product
7732–18–5	Water
8002–05–9	Petroleum
8002–74–2	Paraffin waxes and hydrocarbon waxes
8006–20–0	Fuel gases, low and medium B.T.U.
8008–20–6	Kerosine (petroleum)
8009–03–8	Petrolatum
8012–95–1	Paraffin oils
8030–30–6	Naphtha
8032–32–4	Ligroine
8042–47–5	White mineral oil (petroleum)
8052–41–3	Stoddard solvent
8052–42–4	Asphalt
63231–60–7	Paraffin waxes and hydrocarbon waxes, microcryst.
64741–41–9	Naphtha (petroleum), heavy straight-run
64741–42–0	Naphtha (petroleum), full-range straight-run
64741–43–1	Gas oils (petroleum), straight-run
64741–44–2	Distillates (petroleum), straight-run middle
64741–45–3	Residues (petroleum), atm. tower
64741–46–4	Naphtha (petroleum), light straight-run
64741–47–5	Natural gas condensates (petroleum)
64741–49–7	Condensates (petroleum), vacuum tower
64741–50–0	Distillates (petroleum), light paraffinic
64741–51–1	Distillates (petroleum), heavy paraffinic
64741–52–2	Distillates (petroleum), light naphthenic
64741–53–3	Distillates (petroleum), heavy naphthenic
64741–54–4	Naphtha (petroleum), heavy catalytic cracked
64741–55–5	Naphtha (petroleum), light catalytic cracked
64741–56–6	Residues (petroleum), vacuum
64741–57–7	Gas oils (petroleum), heavy vacuum
64741–58–8	Gas oils (petroleum), light vacuum
64741–59–9	Distillates (petroleum), light catalytic cracked

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
64741–60–2	Distillates (petroleum), intermediate catalytic cracked
64741–61–3	Distillates (petroleum), heavy catalytic cracked
64741–62–4	Clarified oils (petroleum), catalytic cracked
64741–63–5	Naphtha (petroleum), light catalytic reformed
64741–64–6	Naphtha (petroleum), full-range alkylate
64741–65–7	Naphtha (petroleum), heavy alkylate
64741–66–8	Naphtha (petroleum), light alkylate
64741–67–9	Residues (petroleum), catalytic reformer fractionator
64741–68–0	Naphtha (petroleum), heavy catalytic reformed
64741–69–1	Naphtha (petroleum), light hydrocracked
64741–70–4	Naphtha (petroleum), isomerization
64741–73–7	Distillates (petroleum), alkylate
64741–74–8	Naphtha (petroleum), light thermal cracked
64741–75–9	Residues (petroleum), hydrocracked
64741–76–0	Distillates (petroleum), heavy hydrocracked
64741–77–1	Distillates (petroleum), light hydrocracked
64741–78–2	Naphtha (petroleum), heavy hydrocracked
64741–79–3	Coke (petroleum)
64741–80–6	Residues (petroleum), thermal cracked
64741–81–7	Distillates (petroleum), heavy thermal cracked
64741–82–8	Distillates (petroleum), light thermal cracked
64741–83–9	Naphtha (petroleum), heavy thermal cracked
64741–84–0	Naphtha (petroleum), solvent-refined light
64741–85–1	Raffinates (petroleum), sorption process
64741–86–2	Distillates (petroleum), sweetened middle
64741–87–3	Naphtha (petroleum), sweetened
64741–88–4	Distillates (petroleum), solvent-refined heavy paraffinic
64741–89–5	Distillates (petroleum), solvent-refined light paraffinic
64741–90–8	Gas oils (petroleum), solvent-refined
64741–91–9	Distillates (petroleum), solvent-refined middle
64741–92–0	Naphtha (petroleum), solvent-refined heavy
64741–95–3	Residual oils (petroleum), solvent deasphalted
64741–96–4	Distillates (petroleum), solvent-refined heavy naphthenic
64741–97–5	Distillates (petroleum), solvent-refined light naphthenic
64741–98–6	Extracts (petroleum), heavy naphtha solvent
64741–99–7	Extracts (petroleum), light naphtha solvent
64742–01–4	Residual oils (petroleum), solvent-refined
64742–03–6	Extracts (petroleum), light naphthenic distillate solvent
64742–04–7	Extracts (petroleum), heavy paraffinic distillate solvent
64742–05–8	Extracts (petroleum), light paraffinic distillate solvent
64742–06–9	Extracts (petroleum), middle distillate solvent
64742–07–0	Raffinates (petroleum), residual oil decarbonization
64742–08–1	Raffinates (petroleum), heavy naphthenic distillate decarbonization
64742–09–2	Raffinates (petroleum), heavy paraffinic distillate decarbonization
64742–10–5	Extracts (petroleum), residual oil solvent
64742–11–6	Extracts (petroleum), heavy naphthenic distillate solvent
64742–12–7	Gas oils (petroleum), acid-treated
64742–13–8	Distillates (petroleum), acid-treated middle
64742–14–9	Distillates (petroleum), acid-treated light
64742–15–0	Naphtha (petroleum), acid-treated
64742–16–1	Petroleum resins
64742–18–3	Distillates (petroleum), acid-treated heavy naphthenic
64742–19–4	Distillates (petroleum), acid-treated light naphthenic
64742–20–7	Distillates (petroleum), acid-treated heavy paraffinic
64742–21–8	Distillates (petroleum), acid-treated light paraffinic
64742–22–9	Naphtha (petroleum), chemically neutralized heavy
64742–23–0	Naphtha (petroleum), chemically neutralized light
64742–24–1	Sludges (petroleum), acid
64742–25–2	Lubricating oils (petroleum), acid-treated spent
64742–26–3	Hydrocarbon waxes (petroleum), acid-treated
64742–27–4	Distillates (petroleum), chemically neutralized heavy paraffinic
64742–28–5	Distillates (petroleum), chemically neutralized light paraffinic
64742–29–6	Gas oils (petroleum), chemically neutralized
64742–30–9	Distillates (petroleum), chemically neutralized middle
64742–31–0	Distillates (petroleum), chemically neutralized light
64742–32–1	Lubricating oils (petroleum), chemically neutralized spent
64742–33–2	Hydrocarbon waxes (petroleum), chemically neutralized
64742–34–3	Distillates (petroleum), chemically neutralized heavy naphthenic
64742–35–4	Distillates (petroleum), chemically neutralized light naphthenic
64742–36–5	Distillates (petroleum), clay-treated heavy paraffinic
64742–37–6	Distillates (petroleum), clay-treated light paraffinic

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
64742–38–7	Distillates (petroleum), clay-treated middle
64742–39–8	Neutralizing agents (petroleum), spent sodium carbonate
64742–40–1	Neutralizing agents (petroleum), spent sodium hydroxide
64742–41–2	Residual oils (petroleum), clay-treated
64742–42–3	Hydrocarbon waxes (petroleum), clay-treated microcryst.
64742–43–4	Paraffin waxes (petroleum), clay-treated
64742–44–5	Distillates (petroleum), clay-treated heavy naphthenic
64742–45–6	Distillates (petroleum), clay-treated light naphthenic
64742–46–7	Distillates (petroleum), hydrotreated middle
64742–47–8	Distillates (petroleum), hydrotreated light
64742–48–9	Naphtha (petroleum), hydrotreated heavy
64742–49–0	Naphtha (petroleum), hydrotreated light
64742–50–3	Lubricating oils (petroleum), clay-treated spent
64742–51–4	Paraffin waxes (petroleum), hydrotreated
64742–52–5	Distillates (petroleum), hydrotreated heavy naphthenic
64742–53–6	Distillates (petroleum), hydrotreated light naphthenic
64742–54–7	Distillates (petroleum), hydrotreated heavy paraffinic
64742–55–8	Distillates (petroleum), hydrotreated light paraffinic
64742–56–9	Distillates (petroleum), solvent-dewaxed light paraffinic
64742–57–0	Residual oils (petroleum), hydrotreated
64742–58–1	Lubricating oils (petroleum), hydrotreated spent
64742–59–2	Gas oils (petroleum), hydrotreated vacuum
64742–60–5	Hydrocarbon waxes (petroleum), hydrotreated microcryst.
64742–61–6	Slack wax (petroleum)
64742–62–7	Residual oils (petroleum), solvent-dewaxed
64742–63–8	Distillates (petroleum), solvent-dewaxed heavy naphthenic
64742–64–9	Distillates (petroleum), solvent-dewaxed light naphthenic
64742–65–0	Distillates (petroleum), solvent-dewaxed heavy paraffinic
64742–67–2	Foots oil (petroleum)
64742–68–3	Naphthenic oils (petroleum), catalytic dewaxed heavy
64742–69–4	Naphthenic oils (petroleum), catalytic dewaxed light
64742–70–7	Paraffin oils (petroleum), catalytic dewaxed heavy
64742–71–8	Paraffin oils (petroleum), catalytic dewaxed light
64742–72–9	Distillates (petroleum), catalytic dewaxed middle
64742–73–0	Naphtha (petroleum), hydrodesulfurized light
64742–75–2	Naphthenic oils (petroleum), complex dewaxed heavy
64742–76–3	Naphthenic oils (petroleum), complex dewaxed light
64742–78–5	Residues (petroleum), hydrodesulfurized atmospheric tower
64742–79–6	Gas oils (petroleum), hydrodesulfurized
64742–80–9	Distillates (petroleum), hydrodesulfurized middle
64742–81–0	Kerosine (petroleum), hydrodesulfurized
64742–82–1	Naphtha (petroleum), hydrodesulfurized heavy
64742–83–2	Naphtha (petroleum), light steam-cracked
64742–85–4	Residues (petroleum), hydrodesulfurized vacuum
64742–86–5	Gas oils (petroleum), hydrodesulfurized heavy vacuum
64742–87–6	Gas oils (petroleum), hydrodesulfurized light vacuum
64742–88–7	Solvent naphtha (petroleum), medium aliph.
64742–89–8	Solvent naphtha (petroleum), light aliph.
64742–90–1	Residues (petroleum), steam-cracked
64742–91–2	Distillates (petroleum), steam-cracked
64742–92–3	Petroleum resins, oxidized
64742–93–4	Asphalt, oxidized
64742–94–5	Solvent naphtha (petroleum), heavy arom.
64742–95–6	Solvent naphtha (petroleum), light arom.
64742–96–7	Solvent naphtha (petroleum), heavy aliph.
64742–97–8	Distillates (petroleum), oxidized heavy
64742–98–9	Distillates (petroleum), oxidized light
64742–99–0	Residual oils (petroleum), oxidized
64743–00–6	Hydrocarbon waxes (petroleum), oxidized
64743–01–7	Petrolatum (petroleum), oxidized
64743–02–8	Alkenes, C>10 .alpha.-
64743–03–9	Phenols (petroleum)
64743–04–0	Coke (petroleum), recovery
64743–05–1	Coke (petroleum), calcined
64743–06–2	Extracts (petroleum), gas oil solvent
64743–07–3	Sludges (petroleum), chemically neutralized
64754–89–8	Naphthenic acids (petroleum), crude
64771–71–7	Paraffins (petroleum), normal C>10
64771–72–8	Paraffins (petroleum), normal C5-20
67674–12–8	Residual oils (petroleum), oxidized, compounds with triethanolamine
67674–13–9	Petrolatum (petroleum), oxidized, partially deacidified

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
67674–15–1	Petrolatum (petroleum), oxidized, Me ester
67674–16–2	Hydrocarbon waxes (petroleum), oxidized, partially deacidified
67674–17–3	Distillates (petroleum), oxidized light, compounds with triethanolamine
67674–18–4	Distillates (petroleum), oxidized light, Bu esters
67891–79–6	Distillates (petroleum), heavy arom.
67891–80–9	Distillates (petroleum), light arom.
67891–82–1	Hydrocarbon waxes (petroleum), oxidized, compounds with ethanolamine
67891–83–2	Hydrocarbon waxes (petroleum), oxidized, compounds with isopropanolamine
67891–85–4	Hydrocarbon waxes (petroleum), oxidized, compounds with triisopropanolamine
68131–05–5	Hydrocarbon oils, process blends
68131–49–7	Aromatic hydrocarbons, C6-10, acid-treated, neutralized
68131–75–9	Gases (petroleum), C3-4
68153–22–0	Paraffin waxes and Hydrocarbon waxes, oxidized
68187–57–5	Pitch, coal tar-petroleum
68187–58–6	Pitch, petroleum, arom.
68187–60–0	Hydrocarbons, C4, ethane-propane-cracked
68307–98–2	Tail gas (petroleum), catalytic cracked distillate and catalytic cracked naphtha fractionation absorber
68307–99–3	Tail gas (petroleum), catalytic polymn. naphtha fractionation stabilizer
68308–00–9	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer, hydrogen sulfide-free
68308–01–0	Tail gas (petroleum), cracked distillate hydrotreater stripper
68308–02–1	Tail gas (petroleum), distn., hydrogen sulfide-free
68308–03–2	Tail gas (petroleum), gas oil catalytic cracking absorber
68308–04–3	Tail gas (petroleum), gas recovery plant
68308–05–4	Tail gas (petroleum), gas recovery plant deethanizer
68308–06–5	Tail gas (petroleum), hydrodesulfurized distillate and hydrodesulfurized naphtha fractionator, acid-free
68308–07–6	Tail gas (petroleum), hydrodesulfurized vacuum gas oil stripper, hydrogen sulfide-free
68308–08–7	Tail gas (petroleum), isomerized naphtha fractionation stabilizer
68308–09–8	Tail gas (petroleum), light straight-run naphtha stabilizer, hydrogen sulfide-free
68308–10–1	Tail gas (petroleum), straight-run distillate hydrodesulfurizer, hydrogen sulfide-free
68308–11–2	Tail gas (petroleum), propane-propylene alkylation feed prep deethanizer
68308–12–3	Tail gas (petroleum), vacuum gas oil hydrodesulfurizer, hydrogen sulfide-free
68308–27–0	Fuel gases, refinery
68333–22–2	Residues (petroleum), atmospheric
68333–23–3	Naphtha (petroleum), heavy coker
68333–24–4	Hydrocarbon waxes (petroleum), oxidized, compds. with triethanolamine
68333–25–5	Distillates (petroleum), hydrodesulfurized light catalytic cracked
68333–26–6	Clarified oils (petroleum), hydrodesulfurized catalytic cracked
68333–27–7	Distillates (petroleum), hydrodesulfurized intermediate catalytic cracked
68333–28–8	Distillates (petroleum), hydrodesulfurized heavy catalytic cracked
68333–29–9	Residues (petroleum), light naphtha solvent extracts
68333–30–2	Distillates (petroleum), oxidized heavy thermal cracked
68333–81–3	Alkanes, C4-12
68333–88–0	Aromatic hydrocarbons, C9-17
68334–30–5	Fuels, diesel
68409–99–4	Gases (petroleum), catalytic cracked overheads
68410–00–4	Distillates (petroleum), crude oil
68410–05–9	Distillates (petroleum), straight-run light
68410–12–8	Distillates (petroleum), steam-cracked, C5-10 fraction, high-temp. stripping products with light steam-cracked petroleum naphtha C5 fraction polymers
68410–71–9	Raffinates (petroleum), catalytic reformer ethylene glycol-water countercurrent exts.
68410–96–8	Distillates (petroleum), hydrotreated middle, intermediate boiling
68410–97–9	Distillates (petroleum), light distillate hydrotreating process, low-boiling
68410–98–0	Distillates (petroleum), hydrotreated heavy naphtha, deisohexanizer overheads
68411–00–7	Alkenes, C>8
68425–29–6	Distillates (petroleum), naphtha-raffinate pyrolyzate-derived, gasoline-blending
68425–33–2	Petrolatum (petroleum), oxidized, barium salt
68425–34–3	Petrolatum (petroleum), oxidized, calcium salt
68425–35–4	Raffinates (petroleum), reformer, Lurgi unit-sepd.
68425–39–8	Alkenes, C>10 .alpha.-, oxidized
68441–09–8	Hydrocarbon waxes (petroleum), clay-treated microcryst., contg. polyethylene, oxidized
68459–78–9	Alkenes, C18-24 .alpha.-, dimers
68475–57–0	Alkanes, C1-2
68475–58–1	Alkanes, C2-3
68475–59–2	Alkanes, C3-4
68475–60–5	Alkanes, C4-5
68475–61–6	Alkenes, C5, naphtha-raffinate pyrolyzate-derived
68475–70–7	Aromatic hydrocarbons, C6-8, naphtha-raffinate pyrolyzate-derived
68475–79–6	Distillates (petroleum), catalytic reformed depentanizer
68475–80–9	Distillates (petroleum), light steam-cracked naphtha
68476–26–6	Fuel gases
68476–28–8	Fuel gases, C6-8 catalytic reformer

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68476–29–9	Fuel gases, crude oil distillates
68476–30–2	Fuel oil, no. 2
68476–31–3	Fuel oil, no. 4
68476–32–4	Fuel oil, residues-straight-run gas oils, high-sulfur
68476–33–5	Fuel oil, residual
68476–34–6	Fuels, diesel, no. 2
68476–39–1	Hydrocarbons, aliph.-arom.-C4-5-olefinic
68476–40–4	Hydrocarbons, C3-4
68476–42–6	Hydrocarbons, C4-5
68476–43–7	Hydrocarbons, C4-6, C5-rich
68476–44–8	Hydrocarbons, C>3
68476–45–9	Hydrocarbons, C5-10 arom. conc., ethylene-manuf.-by-product
68476–46–0	Hydrocarbons, C3-11, catalytic cracker distillates
68476–47–1	Hydrocarbons, C2-6, C6-8 catalytic reformer
68476–49–3	Hydrocarbons, C2-4, C3-rich
68476–50–6	Hydrocarbons, C≥5, C5-6-rich
68476–52–8	Hydrocarbons, C4, ethylene-manuf.-by-product
68476–53–9	Hydrocarbons, C≥20, petroleum wastes
68476–54–0	Hydrocarbons, C3-5, polymn. unit feed
68476–55–1	Hydrocarbons, C5-rich
68476–56–2	Hydrocarbons, cyclic C5 and C6
68476–77–7	Lubricating oils, refined used
68476–81–3	Paraffin waxes and Hydrocarbon waxes, oxidized, calcium salts
68476–84–6	Petroleum products, gases, inorg.
68476–85–7	Petroleum gases, liquefied
68476–86–8	Petroleum gases, liquefied, sweetened
68477–25–8	Waste gases, vent gas, C1-6
68477–26–9	Wastes, petroleum
68477–29–2	Distillates (petroleum), catalytic reformer fractionator residue, high-boiling
68477–30–5	Distillates (petroleum), catalytic reformer fractionator residue, intermediate-boiling
68477–31–6	Distillates (petroleum), catalytic reformer fractionator residue, low-boiling
68477–33–8	Gases (petroleum), C3-4, isobutane-rich
68477–34–9	Distillates (petroleum), C3-5, 2-methyl-2-butene-rich
68477–35–0	Distillates (petroleum), C3-6, piperylene-rich
68477–36–1	Distillates (petroleum), cracked steam-cracked, C5-18 fraction
68477–38–3	Distillates (petroleum), cracked steam-cracked petroleum distillates
68477–39–4	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C8-10 fraction
68477–40–7	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C10-12 fraction
68477–41–8	Gases (petroleum), extractive, C3-5, butadiene-butene-rich
68477–42–9	Gases (petroleum), extractive, C3-5, butene-isobutylene-rich
68477–44–1	Distillates (petroleum), heavy naphthenic, mixed with steam-cracked petroleum distillates C5-12 fraction
68477–47–4	Distillates (petroleum), mixed heavy olefin vacuum, heart-cut
68477–48–5	Distillates (petroleum), mixed heavy olefin vacuum, low-boiling
68477–53–2	Distillates (petroleum), steam-cracked, C5-12 fraction
68477–54–3	Distillates (petroleum), steam-cracked, C8-12 fraction
68477–55–4	Distillates (petroleum), steam-cracked, C5-10 fraction, mixed with light steam-cracked petroleum naphtha C5 fraction
68477–58–7	Distillates (petroleum), steam-cracked petroleum distillates, C5-18 fraction
68477–59–8	Distillates (petroleum), steam-cracked petroleum distillates cyclopentadiene conc.
68477–60–1	Extracts (petroleum), cold-acid
68477–61–2	Extracts (petroleum), cold-acid, C4-6
68477–62–3	Extracts (petroleum), cold-acid, C3-5, butene-rich
68477–63–4	Extracts (petroleum), reformer recycle
68477–64–5	Gases (petroleum), acetylene manuf. off
68477–65–6	Gases (petroleum), amine system feed
68477–66–7	Gases (petroleum), benzene unit hydrodesulfurizer off
68477–67–8	Gases (petroleum), benzene unit recycle, hydrogen-rich
68477–68–9	Gases (petroleum), blend oil, hydrogen-nitrogen-rich
68477–69–0	Gases (petroleum), butane splitter overheads
68477–70–3	Gases (petroleum), C2-3
68477–71–4	Gases (petroleum), catalytic-cracked gas oil depropanizer bottoms, C4-rich acid-free
68477–72–5	Gases (petroleum), catalytic-cracked naphtha debutanizer bottoms, C3-5-rich
68477–73–6	Gases (petroleum), catalytic cracked naphtha depropanizer overhead, C3-rich acid-free
68477–74–7	Gases (petroleum), catalytic cracker
68477–75–8	Gases (petroleum), catalytic cracker, C1-5-rich
68477–76–9	Gases (petroleum), catalytic polymd. naphtha stabilizer overhead, C2-4-rich
68477–77–0	Gases (petroleum), catalytic reformed naphtha stripper overheads
68477–79–2	Gases (petroleum), catalytic reformer, C1-4-rich
68477–80–5	Gases (petroleum), C6-8 catalytic reformer recycle
68477–81–6	Gases (petroleum), C6-8 catalytic reformer
68477–82–7	Gases (petroleum), C6-8 catalytic reformer recycle, hydrogen-rich

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68477–83–8	Gases (petroleum), C3-5 olefinic-paraffinic alkylation feed
68477–84–9	Gases (petroleum), C2-return stream
68477–85–0	Gases (petroleum), C4-rich
68477–86–1	Gases (petroleum), deethanizer overheads
68477–87–2	Gases (petroleum), deisobutanizer tower overheads
68477–88–3	Gases (petroleum), deethanizer overheads, C3-rich
68477–89–4	Distillates (petroleum), depentanizer overheads
68477–90–7	Gases (petroleum), depropanizer dry, propene-rich
68477–91–8	Gases (petroleum), depropanizer overheads
68477–92–9	Gases (petroleum), dry sour, gas-concn.-unit-off
68477–93–0	Gases (petroleum), gas concn. reabsorber distn.
68477–94–1	Gases (petroleum), gas recovery plant depropanizer overheads
68477–95–2	Gases (petroleum), Girbatol unit feed
68477–96–3	Gases (petroleum), hydrogen absorber off
68477–97–4	Gases (petroleum), hydrogen-rich
68478–00–2	Gases (petroleum), recycle, hydrogen-rich
68478–01–3	Gases (petroleum), reformer make-up, hydrogen-rich
68478–02–4	Gases (petroleum), reforming hydrotreater
68478–03–5	Gases (petroleum), reforming hydrotreater, hydrogen-methane-rich
68478–04–6	Gases (petroleum), reforming hydrotreater make-up, hydrogen-rich
68478–05–7	Gases (petroleum), thermal cracking distn.
68478–08–0	Naphtha (petroleum), light steam-cracked, C5-fraction, oligomer conc.
68478–10–4	Naphtha (petroleum), light steam-cracked, debenzenized, C8-16-cycloalkadiene conc.
68478–12–6	Residues (petroleum), butane splitter bottoms
68478–13–7	Residues (petroleum), catalytic reformer fractionator residue distn.
68478–15–9	Residues (petroleum), C6-8 catalytic reformer
68478–16–0	Residual oils (petroleum), deisobutanizer tower
68478–17–1	Residues (petroleum), heavy coker gas oil and vacuum gas oil
68478–18–2	Residues (petroleum), heavy olefin vacuum
68478–19–3	Residual oils (petroleum), propene purifn. splitter
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free
68478–22–8	Tail gas (petroleum), catalytic cracked naphtha stabilization absorber
68478–24–0	Tail gas (petroleum), catalytic cracker, catalytic reformer and hydrodesulfurizer combined fractionater
68478–25–1	Tail gas (petroleum), catalytic cracker refractionation absorber
68478–26–2	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer
68478–27–3	Tail gas (petroleum), catalytic reformed naphtha separator
68478–28–4	Tail gas (petroleum), catalytic reformed naphtha stabilizer
68478–29–5	Tail gas (petroleum), cracked distillate hydrotreater separator
68478–30–8	Tail gas (petroleum), hydrodesulfurized straight-run naphtha separator
68478–32–0	Tail gas (petroleum), saturate gas plant mixed stream, C4-rich
68478–33–1	Tail gas (petroleum), saturate gas recovery plant, C1-2-rich
68478–34–2	Tail gas (petroleum), vacuum residues thermal cracker
68512–61–8	Residues (petroleum), heavy coker and light vacuum
68512–62–9	Residues (petroleum), light vacuum
68512–78–7	Solvent naphtha (petroleum), light arom., hydrotreated
68512–91–4	Hydrocarbons, C3-4-rich, petroleum distillates
68513–02–0	Naphtha (petroleum), full-range coker
68513–11–1	Fuel gases, hydrotreater fractionation, scrubbed
68513–12–2	Fuel gases, saturate gas unit fractionater-absorber overheads
68513–13–3	Fuel gases, thermal cracked catalytic cracking residue
68513–14–4	Gases (petroleum), catalytic reformed straight-run naphtha stabilizer overheads
68513–15–5	Gases (petroleum), full-range straight-run naphtha dehexanizer off
68513–16–6	Gases (petroleum), hydrocracking depropanizer off, hydrocarbon-rich
68513–17–7	Gases (petroleum), light straight-run naphtha stabilizer off
68513–18–8	Gases (petroleum), reformer effluent high-pressure flash drum off
68513–19–9	Gases (petroleum), reformer effluent low-pressure flash drum off
68513–62–2	Disulfides, C5-12-alkyl
68513–63–3	Distillates (petroleum), catalytic reformed straight-run naphtha overheads
68513–65–5	Butane, branched and linear
68513–66–6	Residues (petroleum), alkylation splitter, C4-rich
68513–67–7	Residues (petroleum), cyclooctadiene bottoms
68513–68–8	Residues (petroleum), deethanizer tower
68513–69–9	Residues (petroleum), steam-cracked light
68513–74–6	Waste gases, ethylene oxide absorber-reactor
68514–15–8	Gasoline, vapor-recovery
68514–29–4	Hydrocarbons, amylene feed debutanizer overheads nonextractable raffinates
68514–31–8	Hydrocarbons, C1-4
68514–32–9	Hydrocarbons, C10 and C12, olefin-rich
68514–33–0	Hydrocarbons, C12 and C14, olefin-rich
68514–34–1	Hydrocarbons, C9-14, ethylene-manuf.-by-product

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68514–35–2	Hydrocarbons, C14-30, olefin-rich
68514–38–5	Hydrocarbons, C4-10-unsatd.
68514–36–3	Hydrocarbons, C1-4, sweetened
68514–37–4	Hydrocarbons, C4-5-unsatd.
68514–79–4	Petroleum products, hydrofiner-powerformer reformates
68515–25–3	Benzene, C1-9-alkyl derivs.
68515–26–4	Benzene, di-C12-14-alkyl derivs.
68515–27–5	Benzene, di-C10-14-alkyl derivs., fractionation overheads, heavy ends
68515–28–6	Benzene, di-C10-14-alkyl derivs., fractionation overheads, light ends
68515–29–7	Benzene, di-C10-14-alkyl derivs., fractionation overheads, middle cut
68515–30–0	Benzene, mono-C20-48-alkyl derivs.
68515–32–2	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms
68515–33–3	Benzene, mono-C10-12-alkyl derivs., fractionation bottoms, heavy ends
68515–34–4	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms, heavy ends
68515–35–5	Benzene, mono-C10-12-alkyl derivs., fractionation bottoms, light ends
68515–36–6	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms, light ends
68516–20–1	Naphtha (petroleum), steam-cracked middle arom.
68526–52–3	Alkenes, C6
68526–53–4	Alkenes, C6-8, C7-rich
68526–54–5	Alkenes, C7-9, C8-rich
68526–55–6	Alkenes, C8-10, C9-rich
68526–56–7	Alkenes, C9-11, C10-rich
68526–57–8	Alkenes, C10-12, C11-rich
68526–58–9	Alkenes, C11-13, C12-rich
68526–77–2	Aromatic hydrocarbons, ethane cracking scrubber effluent and flare drum
68526–99–8	Alkenes, C6-9 .alpha.-
68527–00–4	Alkenes, C8-9 .alpha.-
68527–11–7	Alkenes, C5
68527–13–9	Gases (petroleum), acid, ethanolamine scrubber
68527–14–0	Gases (petroleum), methane-rich off
68527–15–1	Gases (petroleum), oil refinery gas distn. off
68527–16–2	Hydrocarbons, C1-3
68527–18–4	Gas oils (petroleum), steam-cracked
68527–19–5	Hydrocarbons, C1-4, debutanizer fraction
68527–21–9	Naphtha (petroleum), clay-treated full-range straight-run
68527–22–0	Naphtha (petroleum), clay-treated light straight-run
68527–23–1	Naphtha (petroleum), light steam-cracked arom.
68527–26–4	Naphtha (petroleum), light steam-cracked, debenzenized
68527–27–5	Naphtha (petroleum), full-range alkylate, butane-contg.
68553–00–4	Fuel oil, no. 6
68553–14–0	Hydrocarbons, C8-11
68602–79–9	Distillates (petroleum), benzene unit hydrotreater dipentanizer overheads
68602–81–3	Distillates, hydrocarbon resin prodn. higher boiling
68602–82–4	Gases (petroleum), benzene unit hydrotreater depentenizer overheads
68602–83–5	Gases (petroleum), C1-5, wet
68602–84–6	Gases (petroleum), secondary absorber off, fluidized catalytic cracker overheads fractionater
68602–96–0	Distillates (petroleum), oxidized light, strong acid components, compds. with diethanolamine
68602–97–1	Distillates (petroleum), oxidized light, strong acid components, sodium salts
68602–98–2	Distillates (petroleum), oxidized light, strong acid components
68602–99–3	Distillates (petroleum), oxidized light, strong acid-free
68603–00–9	Distillates (petroleum), thermal cracked naphtha and gas oil
68603–01–0	Distillates (petroleum), thermal cracked naphtha and gas oil, C5-dimer-contg.
68603–02–1	Distillates (petroleum), thermal cracked naphtha and gas oil, dimerized
68603–03–2	Distillates (petroleum), thermal cracked naphtha and gas oil, extractive
68603–08–7	Naphtha (petroleum), arom.-contg.
68603–09–8	Hydrocarbon waxes (petroleum), oxidized, calcium salts
68603–10–1	Hydrocarbon waxes (petroleum), oxidized, Me esters, barium salts
68603–11–2	Hydrocarbon waxes (petroleum), oxidized, Me esters, calcium salts
68603–12–3	Hydrocarbon waxes (petroleum), oxidized, Me esters, sodium salts
68603–13–4	Petrolatum (petroleum), oxidized, ester with sorbitol
68603–14–5	Residual oils (petroleum), oxidized, calcium salts
68603–31–6	Alkenes, C10, tert-amylene concentrator by-product
68603–32–7	Alkenes, C15-20 .alpha.-, isomerized
68606–09–7	Fuel gases, expander off
68606–10–0	Gasoline, pyrolysis, debutanizer bottoms
68606–11–1	Gasoline, straight–run, topping-plant
68606–24–6	Hydrocarbons, C4, butene concentrator by-product
68606–25–7	Hydrocarbons, C2-4
68606–26–8	Hydrocarbons, C3
68606–27–9	Gases (petroleum), alkylation feed
68606–28–0	Hydrocarbons, C5 and C10-aliph. and C6-8-arom.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68606–31–5	Hydrocarbons, C3-5, butadiene purifn. by-product
68606–34–8	Gases (petroleum), depropanizer bottoms fractionation off
68606–36–0	Hydrocarbons, C5-unsatd. rich, isoprene purifn. by-product
68607–11–4	Petroleum products, refinery gases
68607–30–7	Residues (petroleum), topping plant, low-sulfur
68608–56–0	Waste gases, from carbon black manuf.
68647-60–9	Hydrocarbons, C>4
68647–61–0	Hydrocarbons, C4-5, tert-amylene concentrator by-product
68647–62–1	Hydrocarbons, C4-5, butene concentrator by-product, sour
68650–36–2	Aromatic hydrocarbons, C8, *o*-xylene-lean
68650–37–3	Paraffin waxes (petroleum), oxidized, sodium salts
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil
68782–98–9	Extracts (petroleum), clarified oil solvent, condensed-ring-arom.-contg.
68782–99–0	Extracts (petroleum), heavy clarified oil solvent, condensed-ring-arom.-contg.
68783–00–6	Extracts (petroleum), heavy naphthenic distillate solvent, arom. conc.
68783–01–7	Extracts (petroleum), heavy naphthenic distillate solvent, paraffinic conc.
68783–02–8	Extracts (petroleum), intermediate clarified oil solvent, condensed-ring-arom.-contg.
68783–04–0	Extracts (petroleum), solvent-refined heavy paraffinic distillate solvent
68783–05–1	Gases (petroleum), ammonia-hydrogen sulfide, water-satd.
68783–06–2	Gases (petroleum), hydrocracking low-pressure separator
68783–07–3	Gases (petroleum), refinery blend
68783–08–4	Gas oils (petroleum), heavy atmospheric
68783–09–5	Naphtha (petroleum), catalytic cracked light distd.
68783–12–0	Naphtha (petroleum), unsweetened
68783–13–1	Residues (petroleum), coker scrubber, condensed-ring-arom.-contg.
68783–15–3	Alkenes, C6-7 .alpha.-
68783–61–9	Fuel gases, refinery, sweetened
68783–62–0	Fuel gases, refinery, unsweetened
68783–64–2	Gases (petroleum), catalytic cracking
68783–65–3	Gases (petroleum), C2-4, sweetened
68783–66–4	Naphtha (petroleum), light, sweetened
68814–47–1	Waste gases, refinery vent
68814–67–5	Gases (petroleum), refinery
68814–89–1	Extracts (petroleum), heavy paraffinic distillates, solvent-deasphalted
68814–87–9	Distillates (petroleum), full-range straight-run middle
68814–90–4	Gases (petroleum), platformer products separator off
68814–91–5	Alkenes, C5-9 .alpha.-
68855–57–2	Alkenes, C6-12 .alpha.-
68855–58–3	Alkenes, C10-16 .alpha.-
68855–59–4	Alkenes, C14-18 .alpha.-
68855–60–7	Alkenes, C14-20 .alpha.-
68911–58–0	Gases (petroleum), hydrotreated sour kerosine depentanizer stabilizer off
68911–59–1	Gases (petroleum), hydrotreated sour kerosine flash drum
68915–96–8	Distillates (petroleum), heavy straight-run
68915–97–9	Gas oils (petroleum), straight-run, high-boiling
68918–69–4	Petrolatum (petroleum), oxidized, zinc salt
68918–73–0	Residues (petroleum), clay-treating filter wash
68918–93–4	Paraffin waxes and Hydrocarbon waxes, oxidized, alkali metal salts
68918–98–9	Fuel gases, refinery, hydrogen sulfide-free
68918–99–0	Gases (petroleum), crude oil fractionation off
68919–00–6	Gases (petroleum), dehexanizer off
68919–01–7	Gases (petroleum), distillate unifiner desulfurization stripper off
68919–02–8	Gases (petroleum), fluidized catalytic cracker fractionation off
68919–03–9	Gases (petroleum), fluidized catalytic cracker scrubbing secondary absorber off
68919–04–0	Gases (petroleum), heavy distillate hydrotreater desulfurization stripper off
68919–05–1	Gases (petroleum), light straight run gasoline fractionation stabilizer off
68919–06–2	Gases (petroleum), naphtha unifiner desulfurization stripper off
68919–07–3	Gases (petroleum), platformer stabilizer off, light ends fractionation
68919–08–4	Gases (petroleum), preflash tower off, crude distn.
68919–09–5	Gases (petroleum), straight-run naphtha catalytic reforming off
68919–10–8	Gases (petroleum), straight-run stabilizer off
68919–11–9	Gases (petroleum), tar stripper off
68919–12–0	Gases (petroleum), unifiner stripper off
68919–15–3	Hydrocarbons, C6-12, benzene-recovery
68919–17–5	Hydrocarbons, C12-20, catalytic alkylation by-products
68919–19–7	Gases (petroleum), fluidized catalytic cracker splitter residues
68919–20–0	Gases (petroleum), fluidized catalytic cracker splitter overheads
68919–37–9	Naphtha (petroleum), full-range reformed
68920–06–9	Hydrocarbons, C7-9
68920–07–0	Hydrocarbons, C<10-linear
68920–64–9	Disulfides, di-C1-2-alkyl

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CAS No.	Product
68921–07–3	Distillates (petroleum), hydrotreated light catalytic cracked
68921–09–5	Distillates (petroleum), naphtha unifiner stripper
68921–08–4	Distillates (petroleum), light straight-run gasoline fractionation stabilizer overheads
68921–67–5	Hydrocarbons, ethylene-manuf.-by-product distn. residues
68952–76–1	Gases (petroleum), catalytic cracked naphtha debutanizer
68952–77–2	Tail gas (petroleum), catalytic cracked distillate and naphtha stabilizer
68952–78–3	Tail gas (petroleum), catalytic hydrodesulfurized distillate fractionation stabilizer, hydrogen sulfide-free
68952–79–4	Tail gas (petroleum), catalytic hydrodesulfurized naphtha separator
68952–80–7	Tail gas (petroleum), straight-run naphtha hydrodesulfurizer
68952–81–8	Tail gas (petroleum), thermal-cracked distillate, gas oil and naphtha absorber
68952–82–9	Tail gas (petroleum), thermal cracked hydrocarbon fractionation stabilizer, petroleum coking
68953–80–0	Benzene, mixed with toluene, dealkylation product
68955–27–1	Distillates (petroleum), petroleum residues vacuum
68955–28–2	Gases (petroleum), light steam-cracked, butadiene conc.
68955–31–7	Gases (petroleum), butadiene process, inorg.
68955–32–8	Natural gas, substitute, steam-reformed desulfurized naphtha
68955–33–9	Gases (petroleum), sponge absorber off, fluidized catalytic cracker and gas oil desulfurizer overhead fractionation
68955–34–0	Gases (petroleum), straight-run naphtha catalytic reformer stabilizer overhead
68955–35–1	Naphtha (petroleum), catalytic reformed
68955–36–2	Residues (petroleum), steam-cracked, resinous
68955–76–0	Aromatic hydrocarbons, C9-16, biphenyl deriv.-rich
68955–96–4	Disulfides, dialkyl and di-Ph, naphtha sweetening
68956–47–8	Fuel oil, isoprene reject absorption
68956–48–9	Fuel oil, residual, wastewater skimmings
68956–52–5	Hydrocarbons, C4-8
68956–54–7	Hydrocarbons, C4-unsatd.
68956–55–8	Hydrocarbons, C5-unsatd.
68956–70–7	Petroleum products, C5-12, reclaimed, wastewater treatment
68988–79–4	Benzene, C10-12-alkyl derivs., distn. residues
68988–99–8	Phenols, sodium salts, mixed with sulfur compounds, gasoline alk. scrubber residues
68989–88–8	Gases (petroleum), crude distn. and catalytic cracking
68990–35–2	Distillates (petroleum), arom., hydrotreated, dicyclopentadiene-rich
68991–49–1	Alkanes, C10-13, arom.-free desulfurized
68991–50–4	Alkanes, C14-17, arom.-free desulfurized
68991–51–5	Alkanes, C10-13, desulfurized
68991–52–6	Alkenes, C10-16
69013–21–4	Fuel oil, pyrolysis
69029–75–0	Oils, reclaimed
69430–33–7	Hydrocarbons, C6-30
70024–88–3	Ethene, thermal cracking products
70528–71–1	Distillates (petroleum), heavy distillate solvent ext. heart-cut
70528–72–2	Distillates (petroleum), heavy distillate solvent ext. vacuum overheads
70528–73–3	Residues (petroleum), heavy distillate solvent ext. vacuum
70592–76–6	Distillates (petroleum), intermediate vacuum
70592–77–7	Distillates (petroleum), light vacuum
70592–78–8	Distillates (petroleum), vacuum
70592–79–9	Residues (petroleum), atm. tower, light
70693–00–4	Hydrocarbon waxes (petroleum), oxidized, sodium salts
70693–06–0	Aromatic hydrocarbons, C9-11
70913–85–8	Residues (petroleum), solvent-extd. vacuum distilled atm. residuum
70913–86–9	Alkanes, C18-70
70955–08–7	Alkanes, C4-6
70955–09–8	Alkenes, C13-14 .alpha.-
70955–10–1	Alkenes, C15-18 .alpha.-
70955–17–8	Aromatic hydrocarbons, C12-20
71243–66–8	Hydrocarbon waxes (petroleum), clay-treated, microcryst., oxidized, potassium salts
71302–82–4	Hydrocarbons, C5-8, Houdry butadiene manuf. by-product
71329–37–8	Residues (petroleum), catalytic cracking depropanizer, C4-rich
71808–30–5	Tail gas (petroleum), thermal cracking absorber
72230–71–8	Distillates (petroleum), cracked steam-cracked, C5-17 fraction
72623–83–7	Lubricating oils (petroleum), C>25, hydrotreated bright stock-based
72623–84–8	Lubricating oils (petroleum), C15-30, hydrotreated neutral oil-based, contg. solvent deasphalted residual oil
72623–85–9	Lubricating oils (petroleum), C20-50, hydrotreated neutral oil-based, high-viscosity
72623–86–0	Lubricating oils (petroleum), C15-30, hydrotreated neutral oil-based
72623–87–1	Lubricating oils (petroleum), C20-50, hydrotreated neutral oil-based
93762–80–2	Alkenes, C15-18

(2) *Specific exempted chemical substances*—(i) *Exemption*. EPA has determined that, at this time, the information in § 710.52(c)(4) associated with the chemicals listed in paragraph (b)(2)(iv) of this section is of low current interest.

(ii) *Considerations*. In making its determination of whether this partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to, one or more of the following considerations:

(A) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in § 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

(iii) *Amendments*. EPA may amend the chemical list in paragraph (b)(2)(iv) of this section on its own initiative or in response to a request from the public based on EPA's determination of whether the information in § 710.52(c)(4) is of low interest.

(A) Any person may request that EPA amend the chemical list in paragraph (b)(2)(iv) of this section. Your request must be in writing and must be submitted to the address provided in § 710.59(d). Requests must identify the chemical in question, as well as its CAS Number or other chemical identification number as identified in § 710.52(c)(3)(i). Your request should provide sufficient information for EPA to determine whether collection of the information in § 710.52(c)(4) for the chemical in question is of low interest. In preparing your request, please refer to the considerations outlined in paragraph (b)(2)(ii) of this section. If a request related to a particular chemical is resubmitted, any subsequent request must clearly identify new information contained in the request. EPA may request other information that it believes necessary to evaluate the request. EPA will issue a written response to each request within 120 days of receipt of the request, and will maintain copies of these responses in a public docket that will be established for each reporting cycle.

(B) As needed, the Agency will initiate rulemaking to make revisions to the list in paragraph (b)(2)(iv) of this section.

(C) To assist EPA in reaching a decision regarding a particular request prior to a given reporting year, requests must be submitted to EPA no later than 12 months prior to the start of the reporting year, i.e., by January 1, 2004, or by each January 1 at 4–year intervals thereafter.

(iv) *List of chemical substances*. EPA has designated the following chemical substances, listed by CAS Number, as partially exempt from reporting under the IUR.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES UNDER § 710.46(B)(2)

CAS No.	Chemical
50–70–4	D-Glucitol
50–81–7	L-Ascorbic acid
50–99–7	D-Glucose
56–87–1	L-Lysine
57–50–1	.alpha.-D-Glucopyranoside, .beta.-D-fructofuranosyl
58–95–7	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, acetate, (2R)-
59–02–9	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, (2R)-
59–51–8	Methionine
69–65–8	D-Mannitol
87–79–6	L-Sorbose
123–94–4	Octadecanoic acid, 2,3-dihydroxypropyl ester
124–38–9	Carbon dioxide
137–08–6	.beta.-Alanine, N-[(2R)-2,4-dihydroxy-3,3-dimethyl-1-oxobutyl]-, calcium alt (2:1)
142–47–2	L-Glutamic acid, monosodium salt
150–30–1	Phenylalanine
1317–65–3	Limestone
1333–74–0	Hydrogen
1592–23–0	Octadecanoic acid, calcium salt
7440–37–1	Argon
7440–44–0	Carbon
7727–37–9	Nitrogen
7782–42–5	Graphite
7782–44–7	Oxygen
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–23–8	Safflower oil
8001–26–1	Linseed oil
8001–29–4	Cottonseed oil
8001–30–7	Corn oil
8001–31–8	Coconut oil
8001–78–3	Castor oil, hydrogenated
8001–79–4	Castor oil
8002–03–7	Peanut oil
8002–13–9	Rape oil
8002–43–5	Lecithins
8002–75–3	Palm oil

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES UNDER § 710.46(B)(2)—Continued

CAS No.	Chemical
8006–54–0	Lanolin
8016–28–2	Lard, oil
8016–70–4	Soybean oil, hydrogenated
8021–99–6	Charcoal, bone
8029–43–4	Syrups, hydrolyzed starch
9004–53–9	Dextrin
9005–25–8	Starch
9050–36–6	Maltodextrin
11103–57–4	Vitamin A
16291–96–6	Charcoal
26836–47–5	D-Glucitol, monooctadecanoate
61789–44–4	Fatty acids, castor-oil
61789–97–7	Tallow
61789–99–9	Lard
64147–40–6	Castor oil, dehydrated
64755–01–7	Fatty acids, tallow, calcium salts
65996–63–6	Starch, acid-hydrolyzed
65996–64–7	Starch, enzyme-hydrolyzed
67701–01–3	Fatty acids, C12-18
68002–85–7	Fatty acids, C14-22 and C16-22-unsatd.
68131–37–3	Syrups, hydrolyzed starch, dehydrated
68188–81–8	Grease, poultry
68308–54–3	Glycerides, tallow mono-, di- and tri-, hydrogenated
68334–00–9	Cottonseed oil, hydrogenated
68334–28–1	Fats and glyceridic oils, vegetable, hydrogenated
68409–76–7	Bone meal, steamed
68424–45–3	Fatty acids, linseed-oil
68424–61–3	Glycerides, C16-18 and C18-unsatd. mono- and di-
68425–17–2	Syrups, hydrolyzed starch, hydrogenated
68439–86–1	Bone, ash
68442–69–3	Benzene, mono-C10-14-alkyl derivs.
68476–78–8	Molasses
68514–27–2	Grease, catch basin
68514–74–9	Palm oil, hydrogenated
68525–87–1	Corn oil, hydrogenated
68648–86–2	Benzene, C14-16-alkyl derivs.
68648–87–3	Benzene, C10-16-alkyl derivs.
68918–42–3	Soaps, stocks, soya
68952–94–3	Soaps, stocks, vegetable-oil
68989–98–0	Fats and glyceridic oils, vegetable, residues
73138–67–7	Lard, hydrogenated
129813–58–7	Benzene, mono-C10-13-alkyl derivs.
129813–59–8	Benzene, mono-C12-14-alkyl derivs.
129813–60–1	Benzene, mono-C14-16-alkyl derivs.

(3) *Inorganic chemical substances*. For purposes of this subpart, an inorganic chemical substance is any chemical substance which does not contain carbon or contains carbon only in the form of carbonato [=CO3], cyano [--CN], cyanato [--OCN], isocyano [--NC], or isocyanato [--NCO] groups or the chalcogen analogues of such groups. During the 2006 submission period, manufacturers are excluded only from the reporting requirements under § 710.52(c)(4) for inorganic chemical substances. During the 2006 submission period, manufacturers of inorganic chemical substances are not excluded from the other reporting requirements under this part. During submission periods following the 2006 submission period, manufacturers of inorganic chemical substances are subject to all of the reporting requirements in this subpart.

§ 710.48 Persons who must report.

Except as provided in §§ 710.49 and 710.50, the following persons are subject to the requirements of this subpart. Persons must determine whether they must report under this section for each chemical substance that they manufacture (including import) at an individual site.

(a) *Persons subject to recurring reporting*. Any person who manufactured (including imported) for commercial purposes 25,000 lbs. (11,340 kg) or more of a chemical substance described in § 710.45 at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 4–year intervals thereafter is subject to reporting.

(b) *Special provisions for importers*. For purposes of this section, the site for a person who imports a chemical substance described in § 710.45 is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The import site may in some cases be the organization's headquarters in the United States (see also § 710.55(b)).

§ 710.49 Persons not subject to this subpart.

A person described in § 710.48 is not subject to the requirements of this subpart if that person qualifies as a small manufacturer as that term is defined in § 704.3 of this chapter. Notwithstanding this exclusion, a

person who qualifies as a small manufacturer is subject to this subpart with respect to any chemical substance that is the subject of a rule proposed or promulgated under section 4, 5(b)(4), or 6 of the Act, or is the subject of an order in effect under section 5(e) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

§ 710.50 Activities for which reporting is not required.

A person described in § 710.48 is not subject to the requirements of this subpart with respect to any chemical substance described in § 710.45 that the person solely manufactured or imported under the following circumstances:

(a) The person manufactured or imported the chemical substance described in § 710.45 solely in small quantities for research and development.

(b) The person imported the chemical substance described in § 710.45 as part of an article.

(c) The person manufactured the chemical substance described in § 710.45 in a manner described in § 720.30(g) or (h) of this chapter.

§ 710.52 Reporting information to EPA.

Any person who must report under this subpart, as described in § 710.48, must submit the information described in this section for each chemical substance described in § 710.45 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. (11,340 kg) or more at any one site during calendar year 2005 or during the calendar year at 4–year intervals thereafter. (See § 710.48(b) for the ''site'' for importers). A separate form must be submitted for each chemical substance at each site for which the submitter is required to report. A submitter of information under this subpart must report information as described in paragraphs (c)(1), (c)(2), and (c)(3) of this section to the extent that such information is *known to or reasonably ascertainable by* that person whereas a submitter must report information as described in paragraph (c)(4) of this section only to the extent that such information is *readily obtainable* by that person. A submitter under this subpart must report information that applies to the calendar year for which the person is required to report (i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter).

(a) *Reporting in writing*. Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.59. The form must include all information described in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media*. Any person who chooses to report information to EPA by means of magnetic media must submit the information described in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.59.

(c) *Information to be reported*. Manufacturers (including importers) of a reportable chemical substance in an amount of 25,000 lbs. (11,340 kg) or more at a site during a reporting year must report the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Manufacturers (including importers) of a reportable chemical substance in an amount of 300,000 lbs. (136,077 kg) or more at a site during a reporting year must report the information described in paragraph (c)(4) of this section in addition to the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. As described in § 710.46(b)(3), manufacturers of certain inorganic chemical substances are not required to report the information described in paragraph (c)(4) of this section during the 2006 submission period, but are required to report this information during subsequent submission periods. As described in § 710.46(b)(1) and (b)(2), manufacturers of certain chemicals are not required to report the information described in paragraph (c)(4) of this section.

(1) *A certification statement signed and dated by an authorized official of the submitter company*. Persons reporting by means of magnetic media must submit this information on the reporting form available as described in § 710.59.

(2) *Company and plant site information*. The following company and plant site information must be reported for each site at which at least 25,000 lbs. (11,340 kg) of a reportable chemical substance is manufactured (including imported) during calendar year 2005 or during the calendar year at 4–year intervals thereafter (see § 710.48(b) for the ''site'' for importers):

(i) The name of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA, the parent company name and Dun and Bradstreet Number, the contact person's full mailing address, the contact person's telephone number and the contact person's e-mail address.

(ii) The name and full street address of each site. A submitter under this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported, and the county or parish (or other jurisdictional indicator) in which the plant site is located.

(3) *Specific information for chemicals manufactured in amounts of 25,000 lbs. or more*. The following chemical-specific information must be reported for each reportable chemical substance manufactured at (including imported into) each site in amounts of 25,000 lbs. (11,340 kg) or more during calendar year 2005 or during the calendar year at 4–year intervals thereafter:

(i) The specific chemical name and CAS Number of each reportable chemical substance at each site. A submitter under this subpart may use an EPA-designated Accession Number for confidential substances, or a premanufacture notice (PMN) case number (see § 720.65 of this chapter) in lieu of a CAS Number when a CAS Number is not known to or reasonably ascertainable by the submitter. In addition to reporting the number itself, submitters must specify the type of number they are reporting by selecting from among the following codes:

CODES TO SPECIFY TYPE OF CHEMICAL IDENTIFYING NUMBER

Codes	Number Type
A	Accession Number
C	CAS Registry Number
P	PMN Number

(ii) A statement indicating, for each reportable chemical substance at each site, whether the substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) A designation indicating, for each reportable chemical substance at each site, whether the substance is site-limited.

(iv) The total volume (in pounds) of each reportable chemical substance manufactured (including imported) at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within plus or minus 10% of the actual volume.

(v) Any person claiming that the volume reported under paragraph (c)(3)(iv) of this section is confidential

business information under § 710.58 must indicate, for each reportable chemical substance at each site, whether the total volume range (in pounds) which corresponds with the specific volume figure reported in response to paragraph (c)(3)(iv) of this section is also confidential. Volume ranges are listed in the following table:

VOLUME RANGES

From	To
25,000 lbs.	300,000 lbs.
300,000 lbs.	1,000,000 lbs.
1,000,000 lbs.	10,000,000 lbs.
10,000,000 lbs.	50,000,000 lbs.
50,000,000 lbs.	100,000,000 lbs.
100,000,000 lbs.	500,000,000 lbs.
500,000,000 lbs.	1,000,000,000 lbs.
Greater than 1,000,000,000 lbs..	

(vi) The total number of workers reasonably likely to be exposed to each reportable chemical substance at each site. For each reportable substance at each site, the submitter must select from among the ranges of workers listed in the following table and report the corresponding code (i.e., W1 through W8):

CODES FOR REPORTING NUMBER OF WORKERS REASONABLY LIKELY TO BE EXPOSED

Codes	Range
W1	Less than 10 workers
W2	At least 10 but less than 25 workers
W3	At least 25 but less than 50 workers
W4	At least 50 but less than 100 workers
W5	At least 100 but less than 500 workers
W6	At least 500 but less than 1,000 workers
W7	At least 1,000 but less than 10,000 workers
W8	At least 10,000 workers

(vii) The maximum concentration, measured by percentage of weight, of each reportable chemical substance at the time it is sent off-site from each site. If the chemical is site-limited, you must report the maximum concentration, measured by percentage of weight, of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. This information must be reported regardless of the physical form(s) in which the substance is sent off-site/reacted on-site. For each substance at each site, select the maximum concentration of the substance from among the ranges listed in the following table and report the corresponding code (i.e., M1 through M5):

CODES FOR REPORTING MAXIMUM CONCENTRATION OF CHEMICAL SUBSTANCE

Codes	Concentration Range (% weight)
M1	Less than 1% by weight
M2	From 1 to 30% by weight
M3	From 31 to 60% by weight
M4	From 61 to 90% by weight
M5	Greater than 90% by weight

(viii) The physical form(s) of the reportable chemical substance as it is sent off-site from each site. If the chemical is site-limited, you must report the physical form(s) of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. For each substance at each site, the submitter must report as many physical forms as apply from among the physical forms listed below:

(A) Dry powder.

(B) Pellets or large crystals.

(C) Water- or solvent-wet solid.

(D) Other solid.

(E) Gas or vapor.

(F) Liquid.

(ix) Submitters must report the percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance, reported in response to paragraph (c)(3)(iv) of this section, that is associated with each physical form reported under paragraph (c)(3)(viii) of this section. The sum of the percentages reported must not add up to more than 100%.

(4) Specific information for chemical substances manufactured in amounts of 300,000 lbs. or more. In addition to the information required under paragraphs (c)(1), (c)(2), and (c)(3) of this section, the following information must be reported for each reportable chemical substance manufactured (including imported) in an amount of 300,000 lbs. (136,077 kg) or more at any one site during calendar year 2005 or during the calendar year at 4–year intervals thereafter. Persons subject to paragraph (c)(4) of this section must report the information described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information reported in response to this paragraph must be reported only to the extent that it is readily obtainable by the submitter. If information responsive to a given data requirement under this paragraph, including information in the form of an estimate, is not readily obtainable, the submitter is not required to respond to the requirement.

(i) Industrial processing and use information.

(A) A designation indicating the type of industrial processing or use operation(s) at each site that receives a reportable substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not). For each chemical substance, report the letters which correspond to the appropriate processing or use operation(s). A particular designation may need to be reported more than once, to the extent that a submitter reports more than one NAICS code (under paragraph (c)(4)(i)(B) of this section) that applies to a given designation under this paragraph.

Designation	Operation
PC	Processing as a reactant
PF	Processing - incorporation into formulation, mixture or reaction product
PA	Processing - incorporation into article
PK	Processing - repackaging
U	Use - non-incorporative activities

(B) The five-digit North American Industrial Classification System (NAICS) codes which best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (c)(4)(i)(A) of this section. Information about how to find these codes is provided in the instruction booklet available from EPA at the address set forth in § 710.59. A particular NAICS code may need to be reported more than once, to the extent that a submitter reports more than one industrial function code (under paragraph (c)(4)(i)(C) of this section) that applies to a given NAICS code under this paragraph.

(C) For each NAICS code reported under paragraph (c)(4)(i)(B) of this section, code(s) from the following list must be selected to designate the industrial function category(ies) that best represents the specific manner in which the chemical substance is used. A particular industrial function category may need to be reported more than once, to the extent that a submitter reports more than one industrial processing or use operation/NAICS code

combination (under paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) of this section) that applies to a given industrial function category under this paragraph. If more than 10 unique combinations of industrial processing or use operations/NAICS codes/industrial function categories apply to a chemical substance, submitters need only report the 10 unique combinations for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight.

CODES FOR REPORTING INDUSTRIAL FUNCTION CATEGORIES

Codes	Category
U01	Adsorbents and absorbents
U02	Adhesives and binding agents
U03	Aerosol propellants
U04	Agricultural chemicals (non-pesticidal)
U05	Anti-adhesive agents
U06	Bleaching agents
U07	Coloring agents, dyes
U08	Coloring agents, pigments
U09	Corrosion inhibitors and anti-scaling agents
U10	Fillers
U11	Fixing agents
U12	Flame retardants
U13	Flotation agents
U14	Fuels
U15	Functional fluids
U16	Intermediates
U17	Lubricants
U18	Odor agents
U19	Oxidizing agents
U20	pH-regulating agents
U21	Photosensitive chemicals
U22	Plating agents and metal surface treating agents
U23	Processing aid, not otherwise listed
U24	Process regulators, used in vulcanization or polymerization processes
U25	Process regulators, other than polymerization or vulcanization processes
U26	Reducing agents
U27	Solvents (for cleaning or degreasing)
U28	Solvents (which become part of product formulation or mixture)
U29	Solvents (for chemical manufacture and processing and are not part of product at greater than one percent by weight)
U30	Stabilizers
U31	Surface active agents
U32	Viscosity adjustors
U33	Other

(D) The estimated percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each combination of industrial processing or use operation, NAICS code and industrial function category. Where a particular combination of industrial processing or use operation, NAICS code and industrial function category accounts for 5% or less of the submitter's site's total production volume of a reportable chemical substance, the percentage must not be rounded off to zero % if the production volume attributable to that industrial processing or use operation, NAICS code and industrial function category combination is 300,000 lbs. (136,077 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular combination of industrial processing or use operation, NAICS code and industrial function category.

(E) For each combination of industrial processing or use operation, NAICS code and industrial function category, the submitter must estimate the number of sites at which each reportable chemical substance is processed or used. For each combination associated with each substance, the submitter must select from among the ranges of sites listed in the following table and report the corresponding code (i.e., S1 through S7):

CODES FOR REPORTING NUMBERS OF SITES

Codes	Range
S1	Less than 10 sites
S2	From 10 to 25 sites
S3	From 25 to 100 sites
S4	From 100 to 250 sites
S5	From 250 to 1,000 sites
S6	From 1,000 to 10,000 sites
S7	More than 10,000 sites

(F) For each combination of industrial processing or use operation, NAICS code and industrial function category, the submitter must estimate the number of workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each substance, the submitter must select from among the worker ranges listed in paragraph (c)(3)(vi) of this section and report the corresponding code (i.e., W1 though W8).

(ii) *Commercial and consumer use information.*

(A) Using the codes listed in this paragraph, submitters must designate the commercial and consumer product category or categories that best describe the commercial and consumer products in which each reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). If more than 10 codes apply to a chemical substance, submitters need only report the 10 codes for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight:

CODES FOR REPORTING COMMERCIAL AND CONSUMER PRODUCT CATEGORIES

Codes	Category
C01	Artists' supplies
C02	Adhesives and sealants
C03	Automotive care products
C04	Electrical and electronic products
C05	Glass and ceramic products
C06	Fabrics, textiles and apparel
C07	Lawn and garden products (non-pesticidal)
C08	Leather products
C09	Lubricants, greases and fuel additives
C10	Metal products
C11	Paper products
C12	Paints and coatings
C13	Photographic chemicals
C14	Polishes and sanitation goods
C15	Rubber and plastic products
C16	Soaps and detergents
C17	Transportation products
C18	Wood and wood furniture
C19	Other

(B) Submitters must determine, within each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section, whether any amount of each reportable chemical substance manufactured (including imported) by the submitter is present in (for example, a plasticizer chemical used to make pacifiers) or on (for example, as a component in the paint on a toy) any consumer products intended for use by children up to the age of 14, regardless of the concentration of the substance remaining in or on the product. Submitters must select from the following options: the chemical substance is used in or on any consumer products intended for use by children, the chemical substance is not used in or on any consumer products intended for use by children, or information as to whether the chemical substance is used in or on any consumer products intended for use by children is not readily obtainable.

(C) The estimated percentage, rounded off to the closest 10%, of the submitter's site's total production volume of the reportable chemical substance associated with each commercial and consumer product

category. Where a particular commercial and consumer product category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage must not be rounded off to zero % if the production volume attributable to that commercial and consumer product category is 300,000 lbs. (136,077 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular commercial and consumer product category.

(D) Where the reportable chemical substance is used in commercial or consumer products, the estimated typical maximum concentration, measured by weight, of the chemical substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section. For each substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section, submitters must select from among the ranges of concentrations listed in the table in paragraph (c)(3)(vii) of this section and report the corresponding code (i.e., M1 through M5).

§ 710.53 When to report.

All information reported to EPA in response to the requirements of this subpart must be submitted during an applicable submission period. The first submission period is from August 25, 2006, to December 23, 2006. Subsequent recurring submission periods are from August 25 to December 23 at 4–year intervals after the first submission period. Any person described in § 710.48(a) must report during each submission period for each chemical substance described in § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e., the ''reporting year'').

§ 710.55 Duplicative reporting.

(a) *With regard to section 8(a) rules.* Any person subject to the requirements of this part who previously has complied with reporting requirements of a rule under section 8(a) of the Act by submitting the information described in § 710.52 for a chemical substance described in § 710.45 to EPA, and has done so within 1 year of the start of a submission period described in § 710.53, is not required to report again on the manufacture of that substance at that site during that submission period.

(b) *With regard to importers.* This part requires that only one report be submitted on each import transaction involving a chemical substance described in § 710.45. When two or more persons are involved in a particular import transaction and each person meets the Agency's definition of ''importer'' as set forth in § § 710.3 and 704.3 of this chapter, they may determine among themselves who should submit the required report; if no report is submitted as required under this part, EPA will hold each such person liable for failure to report.

§ 710.57 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this subpart must maintain records that document any information reported to EPA. Records relevant to reporting during a submission period must be retained for a period of 5 years beginning with the effective date of that submission period.

§ 710.58 Confidentiality.

(a) Any person submitting information under this subpart may assert a business confidentiality claim for the information at the time it is submitted. These claims will apply only to the information submitted with the claim. New confidentiality claims, if necessary, must be asserted with regard to information submitted during the next submission period. Guidance for asserting confidentiality claims is provided in the instruction booklet identified in § 710.59. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in part 2 of this chapter.

(b) Chemical identity. A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this subpart. The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, e.g., as product, effluent, emission? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions listed in paragraph (b)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as ''confidential business information,'' ''proprietary,'' or ''trade secret.''

(c) Site identity. A submitter may assert a claim of confidentiality for a site only if the linkage of the site with a reportable chemical is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, state or local reporting scheme? For example, is the chemical identity linked to a facility in a filing under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any, to your competitive position do you think would result from the identity of the site and the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions listed in paragraph (c)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as ''confidential business information,'' ''proprietary,'' or ''trade secret.''

(d) If no claim of confidentiality is indicated on the reporting form submitted to EPA under this subpart, or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

§ 710.59 Availability of reporting form and instructions.

(a) *Use the proper EPA form*. You must use the EPA form identified as ''Form U'' to submit written information in response to the requirements of this subpart. Copies of Form U are available from EPA at the address set forth in paragraph (c) of this section and from the EPA Internet Home Page at http://www.epa.gov/oppt/iur.

(b) *Follow the reporting instructions*. Guidance for completing the reporting form and preparing an electronic (magnetic media) report will be made available prior to each submission period.

(c) *Obtain the reporting package and copies of the form*. EPA will send a reporting package (consisting of a copy of Form U and a copy of the reporting instructions) to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period. Failure to receive a reporting package does not obviate or otherwise affect the requirement to submit a timely report. If you did not receive a reporting package, but are required to report, you may obtain a copy of the reporting package from EPA by submitting a request for this information as follows:

(1) *By telephone*. Call the EPA TSCA Hotline at 202–554–1404.

(2) *By e-mail*. Send an e-mail request for this information to the EPA TSCA Hotline at TSCA-Hotline@epa.gov.

(3) *By mail*. Send a written request for this information to the following address: TSCA Hotline, Mailcode 7408M, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(4) *By Internet*. To download a copy of the form and/or instructions go to: http://www.epa.gov/oppt/iur.

(d) *Submit the completed reports*. You must submit your completed reporting form(s) and/or magnetic media to EPA at the following address: OPPT Document Control Officer (DCO), Mailcode 7407M, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. Part 723 is amended as follows:

PART 723—[AMENDED]

a. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

b. In § 723.175, revise paragraph (b)(3) to read as follows:

§ 723.175 Premanufacture Notification Exemptions

* * * * *

(b) Definitions. * * *

(3) The terms *byproduct*, *EPA*, *impurities*, *person*, and *site* have the same meanings as in § 710.3 of this chapter.

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[FR Doc. 02–32909 Filed 12–31–02; 9:56 am]

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Federal Register

Tuesday,

January 7, 2003

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Final Rule and Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209299–2299–01; I.D. 112502B]

RIN 0648–AQ19

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures

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

ACTION: Emergency rule; groundfish fishery management measures for January through February 2003; request for comments.

SUMMARY: NMFS announces the January through February 2003 management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. Management measures for January through February 2003 are intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, allow achievement of harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Effective January 1, 2003, through February 28, 2003. Comments must be received no later than 5 p.m, local time (l.t.) on February 6, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to 562–980–4047. Comments will not be accepted if submitted via e-mail or Internet. Information relevant to this rule, which includes environmental assessment/regulatory impact review/ initial regulatory flexibility analysis (EA/RIR), is available for public review during business hours at the office the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This emergency rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su__docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org.*

Background

The Pacific Coast groundfish fishery management plan (FMP) requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that optimum yields (OYs) be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Throughout 2002, the Council has been developing revisions to its specifications and management measures process, through proposed Amendment 17 to the FMP. Among other procedural changes, Amendment 17 would revise the NMFS publication process for the specifications and management measures. Historically, the Council has developed annual specifications and management measures in a public two-meeting process (formerly at its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures were effective until the specifications and management measures for the following year are published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc.* v.*Evans*, 168 F.Supp. 2d 1149 (N.D.Cal., 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications.

Amendment 17 was recently adopted by the Council, but has not yet been submitted for NMFS for approval. NMFS must still comply with the Court's Order for a public notice and comment period on the 2003 specifications and management measures. The Council had its initial meeting regarding these measures in June, and finalized its 2003 specifications and management measures recommendations at its September 9–13, 2002, meeting in Portland, OR. The Council could not act earlier in the year because the new science upon which the specifications and management measures were based was not ready until June. For 2003, the Council has recommended implementing depth-based management measures, with large closed areas intended to prevent vessels from operating in waters where overfished species are commonly found. NMFS and the Council felt that these management changes were significant enough to warrant analysis via an environmental impact statement (EIS). An EIS is a National Environmental Policy Act (NEPA) analysis document that requires a series of public review and comment periods at different document drafting stages. Given the complexity of the annual specifications and management measures package and the need for EIS-related public review periods, NMFS did not have enough time to publish a proposed rule on the Council's recommendations, receive public comments, and implement a final rule by January 1, 2003. Thus, NMFS is publishing this emergency rule under the Magnuson-Stevens Act emergency authority at section 305(c), which finalizes and makes effective the groundfish management measures for January 1 through February 28, 2003.

Absent a final rule by January 1, 2003, management measures for January and February 2003 would revert to those that were in place for January-February 2002. There are several species for which reverting to a management regime without depth-based closures at the beginning of the year could result in either exceeding the annual commercial OYs or very early attainment of OYs during the year. While these circumstances could jeopardize manager's ability to keep landings within rebuilding targets for some species, they could also lead to significant foregone revenue from other

target species whose fisheries might also have to be closed prematurely.

NMFS implemented an emergency rule on September 10, 2002 (67 FR 57973, September 13, 2002), that opened trawling north of 40°10′ N. lat. inshore of 100 fm (183 m) and offshore of 250 fm (457 m), while leaving a large area closed to protect overfished species. Without these depth-based management measures, the northern trawl fishery would have closed entirely for September-December 2002 in order to protect darkblotched rockfish, an overfished species. NMFS expects that failing to implement depth-based management measures for January-February 2003 could similarly jeopardize fisheries participation later in the fishing year.

Specifications and management measures proposed for March-December 2003 in the Proposed Rules section of this issue of the **Federal Register** combined with this emergency rule are intended to protect overfished groundfish species while allowing harvesters some access to healthy groundfish stocks. Specifications and management measures proposed for 2003 in the Proposed Rule section of this issue of the **Federal Register** are designed to rebuild overfished stocks through constraining direct and incidental mortality and areas of fishing operation to prevent overfishing, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP. That proposed rule describes the rationale for the 2003 groundfish management measures, which include trip, bag and size limits, time/area closures, and gear- and area-specific regulations, including the management measures implemented in this emergency rule.

The Council adopted Amendment 17 during its October 28 - November 1, 2002, meeting in Foster City, CA. With that schedule, NMFS expects to review Amendment 17 for final implementation in early 2003, which will formalize a rulemaking process that will allow adequate time for both the Council's recommendations development and NEPA process and NMFS notice and comment process on specifications and management measure packages. These anticipated process changes should reduce the need for future management measure implementation via emergency rule.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator or AA), concurs with the Council's recommendations and announces the following management actions for January 1 through February 28, 2003.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2003 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per-trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2–month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated at 50 CFR 660.302 (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph A.(7)). See paragraph A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish.* "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed.

(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *"Headed" fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both

the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size for headed sablefish, which corresponds to 20 inches (51 cm) tl for whole fish, is 14 inches (36 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure.* ''Closure,'' when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the CCA at A.(19).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. (See 50 CFR 660.323(b)). Council meetings in 2002 will be held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following ''crossover'' provisions apply to vessels operating in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2003, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(d) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are

included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 38° N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 38° N. lat., that vessel is also permitted to take and retain, possess or land Pacific ocean perch (POP) up to its cumulative limit north of 38° N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(iii) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups. [Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.]

(e) *''DTS complex.''* For 2003, there are differential trip limits for the ''DTS complex'' (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph A.(12) when making landings that include any one of the four species in the ''DTS complex.''

(f) *Flatfish complex.* For 2003, there are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph A.(12) when making landings that include any one of the species in the flatfish complex.

(13) *Sorting.* It is unlawful for any person to ''fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied.'' This provision applies to both the limited entry and open access fisheries (see 50 CFR 660.306(h).) The following species must be sorted in 2003:

(a) For vessels with a limited entry permit:

(i) Coastwide widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and Pacific whiting [Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.]

(ii) North of 40°10′ N. lat.- POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide-widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat.- black rockfish, blue rockfish, POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception--thornyheads.

(14) *Limited Entry Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear. No more than one type of trawl gear may be on board during any single fishing trip.

(a) *Types of trawl gear*—Large footrope, small footrope, and midwater or pelagic trawl gears are defined at 50 CFR 660.302 and 660.322(b).

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large footrope trawl.* If Table 3 does not provide a large footrope trawl cumulative or trip limit for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group if large footrope gear is on board. It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. It is unlawful for any vessel using large footrope gear or that has large footrope trawl gear on board to fish for groundfish shoreward of the Rockfish Conservation Areas (RCAs) defined at paragraph (19) of this section. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board.

(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, chilipepper rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, as indicated in Table 3 under NMFS Actions, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs A.(14).

(iii) *Midwater trawl gear.* Higher yellowtail and widow rockfish cumulative trip limits are available for limited entry vessels using midwater trawl gear. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board; trawl gear and non-trawl gear on board.* The cumulative trip limits in Table 3 of Section IV must not be exceeded. For the first time in 2003, it is prohibited to have more than one type

of trawl gear on board. It is prohibited to have more than one type of limited entry trawl gear on board and it is prohibited to have both limited entry trawl gear and exempted trawl gear on board. It is also prohibited to have both trawl gear and non-trawl (limited entry or open access) gear on board at the same time.

(c) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board to be recorded on the State landing receipt(s) for each trip or on an attachment to the State landing receipt.

(d) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the ''A'' platoon, unless the ''B'' platoon is indicated on the limited entry permit. If a vessel is in the ''A'' platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. No more than one trawl permit may be registered to a vessel unless a permit is endorsed for both trawl and either longline or pot gear and is being stacked under § 660.335(c) for use in the limited entry fixed gear primary sablefish fishery. If a vessel is registered for use with more than one permit with a trawl endorsement through the fixed gear permit stacking program, then the vessel owner must designate one trawl-endorsed permit as his base trawl permit and may only fish in the platoon associated with that base trawl permit. If a limited entry trawl permit is authorized for the ''B'' platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the ''A'' platoon), unless otherwise specified.

(a) For a vessel in the ''B'' platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the ''A'' platoon will be effective on January 16, 2003, for the ''B'' platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the ''B'' platoon, unless otherwise specified.

(b) A vessel authorized to operate in the ''B'' platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the ''B'' platoon will have the same cumulative trip limits for the November 16, 2003, through December 31, 2003, period as a vessel operating in the ''A'' platoon has for the November 1, 2002, through December 31, 2002 period.

(16) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2003 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the ''B'' platoon.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(18) *Application of requirements.* Paragraphs B. and C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in Section V. The provisions in paragraphs B. and C. that are not covered under the headings ''limited entry'' or ''open access'' apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph D. pertains to the recreational fishery.

(19) *Rockfish Conservation Areas.* For 2003, the Council has introduced several RCAs and a Yelloweye Rockfish Conservation Area (YRCA) and has retained the Cowcod Conservation Area (CCAs) used in 2001 and 2002. Collectively, any geographically defined area where specific fishing activities are prohibited (closed) or otherwise restricted intended to protect a particular groundfish species or species group or intended to protect a complex of species is referred to as a Groundfish Conservation Area. The YRCA, the CCAs, and the larger depth-based RCAs are Groundfish Conservation Areas. Larger RCAs intended to protect a complex of species, such as overfished shelf rockfish species, have boundaries defined by a series of coordinates intended to approximate particular depth contours, such as 100 fm (183 m), 150 fm (274 m), 250 fm (457,) etc. Different gear types or fishing sectors may have RCAs with differing boundaries.

(a) *Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA. The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°04′ N. lat.; 125°18′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 125°11′ W. long.;
48°18′ N. lat.; 125°18′ W. long.;
and connecting back to 48°00′ N. lat.; 124°59′ W. long.

(b) *Cowcod Conservation Areas.* The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20–fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30'' N. lat., and bounded on the south by the latitude line at 32°59′30'' N. lat.

(c) *Limited entry trawl groundfish coastwide and open access exempted trawl south of 40°10′ N. lat. Conservation Area.*

(i) The trawl RCA is closed to limited entry groundfish trawl fishing coastwide and to open access exempted trawl fishing (except for pink shrimp trawling) south of 40°10′ N. lat. Fishing with limited entry groundfish trawl gear is prohibited within the trawl RCA north of 40°10′ N. lat. and fishing with any trawl gear is prohibited within the trawl RCA south of 40°10′ N. lat., unless that vessel is trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl gear in the trawl RCA. South of 40°10′ N. lat., it is unlawful to take and retain, possess, or land any species of fish taken with any type of trawl gear in the trawl RCA. Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all

towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for Pacific whiting during the primary whiting season or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting during the primary whiting season caught with midwater trawl gear or to taking and retaining yellowtail or widow rockfish with midwater trawl gear when mid-water gear trip limits are authorized for those species (November-December 2003.) If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside of the RCA. Nothing in these Federal regulations supercede any State regulations that may prohibit trawling shoreward of the 3 nm State waters boundary line.

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) in January through June and October through December, and approximating 75 fm (137 m) in July and August. Between 40°10′ N. lat. and 34°27′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 50 fm (91 m) in January and February and 60 fm (110 m) in March through December. Between 34°27′ N. lat. and the U.S. border with Mexico, along the mainland coast of California, the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) throughout the year. Between 34°27′ N. lat. and the U.S. border with Mexico, adjacent to the islands offshore of California, the trawl RCA is defined along an inshore boundary approximating 20 fm (37 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 38° N. lat., the trawl RCA is defined along a western, offshore boundary approximating 250 fm (457 m) in March through October, and approximating 250 fm (457 m) with some modifications to provide open areas to allow winter petrale sole fishing in January, February, November, and December. Between 38° N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(d) *Non-trawl (limited entry fixed gear and open access nontrawl gears) Groundfish Conservation Area.*

(i) The non-trawl RCA is closed to non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, pot or trap, gillnet, set net, trammel net and spear) fishing for groundfish. Fishing with non-trawl gear is prohibited within the non-trawl gear RCA. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear in the non-trawl gear RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl gear RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear. If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.

(ii) Between the U.S. border with Canada and 46°16′ N. lat., the non-trawl gear RCA extends to the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 27 fm (49 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 20 fm (37 m) throughout the year, except as provided for between Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.) Between a line drawn due south from Point Fermin, CA (33°41′ N. lat.; 118°18′ W. long.) and a line drawn due west from the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.,) vessels fishing with hook-and-line and/ or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 40°10′ N. lat., the non-trawl gear RCA is defined along a western, offshore boundary approximating 100 fm (183 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(e) *RCA Boundary Coordinates.* Coordinates for the specific boundaries that approximate the depth contours selected for both trawl and non-trawl gear RCAs are provided here.

(i) The 27–fm (49–m) depth contour used between 46°16′ N. lat. and 40°10′ N. lat. as an eastern boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°12.39′ W. long.;

(2) 46°14.85′ N. lat., 124°12.39′ W. long.;

(3) 46°3.95′ N. lat., 124°3.64′ W. long.;

(4) 45°43.14′ N. lat., 124°0.17′ W. long.;

(5) 45°23.33′ N. lat., 124°1.99′ W. long.;

(6) 45°9.54′ N. lat., 124°1.65′ W. long.;

(7) 44°39.99′ N. lat., 124°8.67′ W. long.;

(8) 44°20.86′ N. lat., 124°10.31′ W. long.;

(9) 43°37.11′ N. lat., 124°14.91′ W. long.;

(10) 43°27.54′ N. lat., 124°18.98′ W. long.;

(11) 43°20.68′ N. lat., 124°25.53′ W. long.;

(12) 43°15.08′ N. lat., 124°27.17′ W. long.;

(13) 43°6.89′ N. lat., 124°29.65′ W. long.;

(14) 43°1.02′ N. lat., 124°29.70′ W. long.;

(15) 42°52.67′ N. lat., 124°36.10′ W. long.;

(16) 42°45.96′ N. lat., 124°37.95′ W. long.;

(17) 42°45.80′ N. lat., 124°35.41′ W. long.;

(18) 42°38.46′ N. lat., 124°27.49′ W. long.;

(19) 42°35.29′ N. lat., 124°26.85′ W. long.;

(20) 42°31.49′ N. lat., 124°31.40′ W. long.;

(21) 42°29.06′ N. lat., 124°32.24′ W. long.;

(22) 42°14.26′ N. lat., 124°26.27′ W. long.;

(23) 42°4.86′ N. lat., 124°21.94′ W. long.;

(24) 42°0.10′ N. lat., 124°20.99′ W. long.;

(25) 42°0.00′ N. lat., 124°21.03′ W. long.;

(26) 41°56.33′ N. lat., 124°20.34′ W. long.;

(27) 41°50.93′ N. lat., 124°23.74′ W. long.;

(28) 41°41.83′ N. lat., 124°16.99′ W. long.;

(29) 41°35.48′ N. lat., 124°16.35′ W. long.;

(30) 41°23.51′ N. lat., 124°10.48′ W. long.;
(31) 41°4.62′ N. lat., 124°14.44′ W. long.;
(32) 40°54.28′ N. lat., 124°13.90′ W. long.;
(33) 40°40.37′ N. lat., 124°26.21′ W. long.;
(34) 40°34.03′ N. lat., 124°27.36′ W. long.;
(35) 40°28.88′ N. lat., 124°32.41′ W. long.;
(36) 40°24.82′ N. lat., 124°29.56′ W. long.;
(37) 40°22.64′ N. lat., 124°24.05′ W. long.;
(38) 40°18.67′ N. lat., 124°21.90′ W. long.;
(39) 40°14.23′ N. lat., 124°23.72′ W. long.; and
(40) 40°10.00′ N. lat., 124°17.22′ W. long.;

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.58′ N. lat., 125°42.47′ W. long.;
(2) 48°20.26′ N. lat., 125°23.03′ W. long.;
(3) 48°23.00′ N. lat., 124°50.00′ W. long.;
(4) 48°17.10′ N. lat., 124°54.82′ W. long.;
(5) 48°05.10′ N. lat., 124°59.40′ W. long.;
(6) 48°04.98′ N. lat., 125°10.02′ W. long.;
(7) 47°54.00′ N. lat., 125°04.98′ W. long.;
(8) 47°44.52′ N. lat., 125°00.00′ W. long.;
(9) 47°42.00′ N. lat., 124°58.98′ W. long.;
(10) 47°35.52′ N. lat., 124°55.50′ W. long.;
(11) 47°22.02′ N. lat., 124°44.40′ W. long.;
(12) 47°16.98′ N. lat., 124°45.48′ W. long.;
(13) 47°10.98′ N. lat., 124°48.48′ W. long.;
(14) 47°04.98′ N. lat., 124°49.02′ W. long.;
(15) 46°57.98′ N. lat., 124°46.50′ W. long.;
(16) 46°54.00′ N. lat., 124°45.00′ W. long.;
(17) 46°48.48′ N. lat., 124°44.52′ W. long.;
(18) 46°40.02′ N. lat., 124°36.00′ W. long.;
(19) 46°34.09′ N. lat., 124°27.03′ W. long.;
(20) 46°24.64′ N. lat., 124°30.33′ W. long.;
(21) 46°19.98′ N. lat., 124°36.00′ W. long.;
(22) 46°18.14′ N. lat., 124°34.26′ W. long.;
(23) 46°18.72′ N. lat., 124°22.68′ W. long.;
(24) 46°14.64′ N. lat., 124°22.54′ W. long.;
(25) 46°11.08′ N. lat., 124°30.74′ W. long.;
(26) 46°4.28′ N. lat., 124°31.49′ W. long.;
(27) 45°55.97′ N. lat., 124°19.95′ W. long.;
(28) 45°44.97′ N. lat., 124°15.96′ W. long.;
(29) 45°43.14′ N. lat., 124°21.86′ W. long.;
(30) 45°34.44′ N. lat., 124°14.44′ W. long.;
(31) 45°15.49′ N. lat., 124°11.49′ W. long.;
(32) 44°57.31′ N. lat., 124°15.03′ W. long.;
(33) 44°43.90′ N. lat., 124°28.88′ W. long.;
(34) 44°28.64′ N. lat., 124°35.67′ W. long.;
(35) 44°25.31′ N. lat., 124°43.08′ W. long.;
(36) 44°17.15′ N. lat., 124°47.98′ W. long.;
(37) 44°13.67′ N. lat., 124°54.41′ W. long.;
(38) 43°56.85′ N. lat., 124°55.32′ W. long.;
(39) 43°57.50′ N. lat., 124°41.23′ W. long.;
(40) 44°1.79′ N. lat., 124°38.00′ W. long.;
(41) 44°2.16′ N. lat., 124°32.62′ W. long.;
(42) 43°58.15′ N. lat., 124°30.39′ W. long.;
(43) 43°53.25′ N. lat., 124°31.39′ W. long.;
(44) 43°35.56′ N. lat., 124°28.17′ W. long.;
(45) 43°21.84′ N. lat., 124°36.07′ W. long.;
(46) 43°19.73′ N. lat., 124°34.86′ W. long.;
(47) 43°9.38′ N. lat., 124°39.30′ W. long.;
(48) 43°7.11′ N. lat., 124°37.66′ W. long.;
(49) 42°56.27′ N. lat., 124°43.29′ W. long.;
(50) 42°45.00′ N. lat., 124°41.50′ W. long.;
(51) 42°39.72′ N. lat., 124°39.11′ W. long.;
(52) 42°32.88′ N. lat., 124°40.13′ W. long.;
(53) 42°32.30′ N. lat., 124°39.04′ W. long.;
(54) 42°26.96′ N. lat., 124°44.31′ W. long.;
(55) 42°24.11′ N. lat., 124°42.16′ W. long.;
(56) 42°21.10′ N. lat., 124°35.46′ W. long.;
(57) 42°14.72′ N. lat., 124°32.30′ W. long.;
(58) 42°9.24′ N. lat., 124°32.04′ W. long.;
(59) 42°1.89′ N. lat., 124°32.70′ W. long.;
(60) 42°0.03′ N. lat., 124°32.02′ W. long.;
(61) 42°0.00′ N. lat., 124°32.02′ W. long.;
(62) 41°46.18′ N. lat., 124°26.60′ W. long.;
(63) 41°29.22′ N. lat., 124°28.04′ W. long.;
(64) 41°9.62′ N. lat., 124°19.75′ W. long.;
(65) 40°50.71′ N. lat., 124°23.80′ W. long.;
(66) 40°43.35′ N. lat., 124°29.30′ W. long.;
(67) 40°40.24′ N. lat., 124°29.86′ W. long.;
(68) 40°37.50′ N. lat., 124°28.68′ W. long.;
(69) 40°34.42′ N. lat., 124°29.65′ W. long.;
(70) 40°34.74′ N. lat., 124°34.61′ W. long.;
(71) 40°31.70′ N. lat., 124°37.13′ W. long.;
(72) 40°25.03′ N. lat., 124°34.77′ W. long.;
(73) 40°23.58′ N. lat., 124°31.49′ W. long.;
(74) 40°23.64′ N. lat., 124°28.35′ W. long.;
(75) 40°22.53′ N. lat., 124°24.76′ W. long.;
(76) 40°21.46′ N. lat., 124°24.86′ W. long.;
(77) 40°21.74′ N. lat., 124°27.63′ W. long.;
(78) 40°19.76′ N. lat., 124°28.15′ W. long.;
(79) 40°18.00′ N. lat., 124°25.38′ W. long.;
(80) 40°18.54′ N. lat., 124°22.94′ W. long.;
(81) 40°15.55′ N. lat., 124°25.75′ W. long.;
(82) 40°16.06′ N. lat., 124°30.48′ W. long.;
(83) 40°15.75′ N. lat., 124°31.69′ W. long.; and
(84) 40°10.00′ N. lat., 124°21.28′ W. long.

(iii) The 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;

(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.08′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.98′ N. lat., 125°13.24′ W. long.;
(22) 48°22.95′ N. lat., 125°10.79′ W. long.;
(23) 48°21.61′ N. lat., 125°02.54′ W. long.;
(24) 48°23.00′ N. lat., 124°49.34′ W. long.;
(25) 48°17.00′ N. lat., 124°56.50′ W. long.;
(26) 48°06.00′ N. lat., 125°00.00′ W. long.;
(27) 48°04.62′ N. lat., 125°01.73′ W. long.;
(28) 48°04.84′ N. lat., 125°04.03′ W. long.;
(29) 48°06.41′ N. lat., 125°06.51′ W. long.;
(30) 48°06.00′ N. lat., 125°08.00′ W. long.;
(31) 48°07.28′ N. lat., 125°11.14′ W. long.;
(32) 48°03.45′ N. lat., 125°16.66′ W. long.;
(33) 47°59.50′ N. lat., 125°18.88′ W. long.;
(34) 47°58.68′ N. lat., 125°16.19′ W. long.;
(35) 47°56.62′ N. lat., 125°13.50′ W. long.;
(36) 47°53.71′ N. lat., 125°11.96′ W. long.;
(37) 47°51.70′ N. lat., 125°09.38′ W. long.;
(38) 47°49.95′ N. lat., 125°06.07′ W. long.;
(39) 47°49.00′ N. lat., 125°03.00′ W. long.;
(40) 47°46.95′ N. lat., 125°04.00′ W. long.;
(41) 47°46.58′ N. lat., 125°03.15′ W. long.;
(42) 47°44.07′ N. lat., 125°04.28′ W. long.;
(43) 47°43.32′ N. lat., 125°04.41′ W. long.;
(44) 47°40.95′ N. lat., 125°04.14′ W. long.;
(45) 47°39.58′ N. lat., 125°04.97′ W. long.;
(46) 47°36.23′ N. lat., 125°02.77′ W. long.;
(47) 47°34.28′ N. lat., 124°58.66′ W. long.;
(48) 47°32.17′ N. lat., 124°57.77′ W. long.;
(49) 47°30.27′ N. lat., 124°56.16′ W. long.;
(50) 47°30.60′ N. lat., 124°54.80′ W. long.;
(51) 47°29.26′ N. lat., 124°52.21′ W. long.;
(52) 47°28.21′ N. lat., 124°50.65′ W. long.;
(53) 47°27.38′ N. lat., 124°49.34′ W. long.;
(54) 47°25.61′ N. lat., 124°48.26′ W. long.;
(55) 47°23.54′ N. lat., 124°46.42′ W. long.;
(56) 47°20.64′ N. lat., 124°45.91′ W. long.;
(57) 47°17.99′ N. lat., 124°45.59′ W. long.;
(58) 47°18.20′ N. lat., 124°49.12′ W. long.;
(59) 47°15.01′ N. lat., 124°51.09′ W. long.;
(60) 47°12.61′ N. lat., 124°54.89′ W. long.;
(61) 47°08.22′ N. lat., 124°56.53′ W. long.;
(62) 47°08.50′ N. lat., 124°54.95′ W. long.;
(63) 47°01.92′ N. lat., 124°57.74′ W. long.;
(64) 47°01.14′ N. lat., 124°59.35′ W. long.;
(65) 46°58.48′ N. lat., 124°57.81′ W. long.;
(66) 46°56.79′ N. lat., 124°56.03′ W. long.;
(67) 46°58.01′ N. lat., 124°55.09′ W. long.;
(68) 46°55.07′ N. lat., 124°54.14′ W. long.;
(69) 46°59.60′ N. lat., 124°49.79′ W. long.;
(70) 46°58.72′ N. lat., 124°48.78′ W. long.;
(71) 46°54.45′ N. lat., 124°48.36′ W. long.;
(72) 46°53.99′ N. lat., 124°49.95′ W. long.;
(73) 46°54.38′ N. lat., 124°52.73′ W. long.;
(74) 46°52.38′ N. lat., 124°52.02′ W. long.;
(75) 46°48.93′ N. lat., 124°49.17′ W. long.;
(76) 46°41.50′ N. lat., 124°43.00′ W. long.;
(77) 46°34.50′ N. lat., 124°28.50′ W. long.;
(78) 46°29.00′ N. lat., 124°30.00′ W. long.;
(79) 46°20.00′ N. lat., 124°36.50′ W. long.;
(80) 46°18.00′ N. lat., 124°38.00′ W. long.;
(81) 46°17.00′ N. lat., 124°35.50′ W. long.;
(82) 46°17.00′ N. lat., 124°22.50′ W. long.;
(83) 46°15.02′ N. lat., 124°23.77′ W. long.;
(84) 46°12.00′ N. lat., 124°35.00′ W. long.;
(85) 46°10.50′ N. lat., 124°39.00′ W. long.;
(86) 46°8.90′ N. lat., 124°39.11′ W. long.;
(87) 46°0.97′ N. lat., 124°38.56′ W. long.;
(88) 45°57.04′ N. lat., 124°36.42′ W. long.;
(89) 45°54.29′ N. lat., 124°40.02′ W. long.;
(90) 45°47.19′ N. lat., 124°35.58′ W. long.;
(91) 45°41.75′ N. lat., 124°28.32′ W. long.;
(92) 45°34.16′ N. lat., 124°24.23′ W. long.;
(93) 45°27.10′ N. lat., 124°21.74′ W. long.;
(94) 45°17.14′ N. lat., 124°17.85′ W. long.;
(95) 44°59.51′ N. lat., 124°19.34′ W. long.;
(96) 44°49.30′ N. lat., 124°29.97′ W. long.;
(97) 44°45.64′ N. lat., 124°33.89′ W. long.;
(98) 44°33.00′ N. lat., 124°36.88′ W. long.;
(99) 44°28.20′ N. lat., 124°44.72′ W. long.;
(100) 44°13.16′ N. lat., 124°56.36′ W. long.;
(101) 43°56.34′ N. lat., 124°55.74′ W. long.;
(102) 43°56.47′ N. lat., 124°34.61′ W. long.;
(103) 43°42.73′ N. lat., 124°32.41′ W. long.;
(104) 43°30.92′ N. lat., 124°34.43′ W. long.;
(105) 43°17.44′ N. lat., 124°41.16′ W. long.;
(106) 43°7.04′ N. lat., 124°41.25′ W. long.;
(107) 43°3.45′ N. lat., 124°44.36′ W. long.;
(108) 43°3.90′ N. lat., 124°50.81′ W. long.;

(109) 42°55.70′ N. lat., 124°52.79′ W. long.;
(110) 42°54.12′ N. lat., 124°47.36′ W. long.;
(111) 42°43.99′ N. lat., 124°42.38′ W. long.;
(112) 42°38.23′ N. lat., 124°41.25′ W. long.;
(113) 42°33.02′ N. lat., 124°42.38′ W. long.;
(114) 42°31.89′ N. lat., 124°42.04′ W. long.;
(115) 42°30.08′ N. lat., 124°42.67′ W. long.;
(116) 42°28.27′ N. lat., 124°47.08′ W. long.;
(117) 42°25.22′ N. lat., 124°43.51′ W. long.;
(118) 42°19.22′ N. lat., 124°37.92′ W. long.;
(119) 42°16.28′ N. lat., 124°36.11′ W. long.;
(120) 42°5.65′ N. lat., 124°34.92′ W. long.;
(121) 42°0.00′ N. lat., 124°35.27′ W. long.;
(122) 42°00.00′ N. lat., 124°35.26′ W. long.;
(123) 41°47.04′ N. lat., 124°27.64′ W. long.;
(124) 41°32.92′ N. lat., 124°28.79′ W. long.;
(125) 41°24.17′ N. lat., 124°28.46′ W. long.;
(126) 41°10.12′ N. lat., 124°20.50′ W. long.;
(127) 40°51.41′ N. lat., 124°24.38′ W. long.;
(128) 40°43.71′ N. lat., 124°29.89′ W. long.;
(129) 40°40.14′ N. lat., 124°30.90′ W. long.;
(130) 40°37.35′ N. lat., 124°29.05′ W. long.;
(131) 40°34.76′ N. lat., 124°29.82′ W. long.;
(132) 40°36.78′ N. lat., 124°37.06′ W. long.;
(133) 40°32.44′ N. lat., 124°39.58′ W. long.;
(134) 40°24.82′ N. lat., 124°35.12′ W. long.;
(135) 40°23.30′ N. lat., 124°31.60′ W. long.;
(136) 40°23.52′ N. lat., 124°28.78′ W. long.;
(137) 40°22.43′ N. lat., 124°25.00′ W. long.;
(138) 40°21.72′ N. lat., 124°24.94′ W. long.;
(139) 40°21.87′ N. lat., 124°27.96′ W. long.;
(140) 40°21.40′ N. lat., 124°28.74′ W. long.;
(141) 40°19.68′ N. lat., 124°28.49′ W. long.;
(142) 40°17.73′ N. lat., 124°25.43′ W. long.;
(143) 40°18.37′ N. lat., 124°23.35′ W. long.;
(144) 40°15.75′ N. lat., 124°26.05′ W. long.;
(145) 40°16.75′ N. lat., 124°33.71′ W. long.;
(146) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(147) 40°10.00′ N. lat., 124°21.12′ W. long.

(iv) The 250–fm (457–m) depth contour used north of 38° N. lat. for March through October as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.68′ N. lat., 125°42.10′ W. long.;
(2) 48°12.83′ N. lat., 125°39.71′ W. long.;
(3) 48°13.00′ N. lat., 125°39.00′ W. long.;
(4) 48°12.73′ N. lat., 125°38.87′ W. long.;
(5) 48°12.43′ N. lat., 125°39.12′ W. long.;
(6) 48°11.83′ N. lat., 125°40.01′ W. long.;
(7) 48°11.78′ N. lat., 125°41.70′ W. long.;
(8) 48°10.62′ N. lat., 125°43.41′ W. long.;
(9) 48°09.23′ N. lat., 125°42.80′ W. long.;
(10) 48°08.79′ N. lat., 125°43.79′ W. long.;
(11) 48°08.50′ N. lat., 125°45.00′ W. long.;
(12) 48°07.43′ N. lat., 125°46.36′ W. long.;
(13) 48°06.00′ N. lat., 125°46.50′ W. long.;
(14) 48°05.38′ N. lat., 125°42.82′ W. long.;
(15) 48°04.19′ N. lat., 125°40.40′ W. long.;
(16) 48°03.50′ N. lat., 125°37.00′ W. long.;
(17) 48°01.50′ N. lat., 125°40.00′ W. long.;
(18) 47°57.00′ N. lat., 125°37.00′ W. long.;
(19) 47°55.21′ N. lat., 125°37.22′ W. long.;
(20) 47°54.02′ N. lat., 125°36.57′ W. long.;
(21) 47°53.67′ N. latl, 125°35.06′ W. long.;
(22) 47°54.14′ N. lat., 125°32.35′ W. long.;
(23) 47°55.50′ N. lat., 125°28.56′ W. long.;
(24) 47°57.03′ N. lat., 125°26.52′ W. long.;
(25) 47°57.98′ N. lat., 125°25.08′ W. long.;
(26) 48°00.54′ N. lat., 125°24.38′ W. long.;
(27) 48°01.45′ N. lat., 125°23.70′ W. long.;
(28) 48°01.97′ N. lat., 125°22.34′ W. long.;
(29) 48°03.68′ N. lat., 125°21.20′ W. long.;
(30) 48°01.96′ N. lat., 125°19.56′ W. long.;
(31) 48°00.98′ N. lat., 125°20.43′ W. long.;
(32) 48°00.00′ N. lat., 125°20.68′ W. long.;
(33) 47°58.00′ N. lat., 125°20.00′ W. long.;
(34) 47°57.65′ N. lat., 125°19.18′ W. long.;
(35) 47°58.00′ N. lat., 125°18.00′ W. long.;
(36) 47°56.59′ N. lat., 125°18.15′ W. long.;
(37) 47°51.30′ N. lat., 125°18.32′ W. long.;
(38) 47°49.88′ N. lat., 125°14.49′ W. long.;
(39) 47°49.00′ N. lat., 125°11.00′ W. long.;
(40) 47°47.99′ N. lat., 125°07.31′ W. long.;
(41) 47°46.47′ N. lat., 125°08.63′ W. long.;
(42) 47°46.00′ N. lat., 125°06.00′ W. long.;
(43) 47°44.50′ N. lat., 125°07.50′ W. long.;
(44) 47°43.39′ N. lat., 125°06.57′ W. long.;
(45) 47°42.37′ N. lat., 125°05.74′ W. long.;
(46) 47°40.61′ N. lat., 125°06.48′ W. long.;
(47) 47°37.43′ N. lat., 125°07.33′ W. long.;
(48) 47°33.68′ N. lat., 125°04.80′ W. long.;
(49) 47°30.00′ N. lat., 125°00.00′ W. long.;
(50) 47°28.00′ N. lat., 124°58.50′ W. long.;
(51) 47°28.88′ N. lat., 124°54.71′ W. long.;
(52) 47°27.70′ N. lat., 124°51.87′ W. long.;
(53) 47°24.84′ N. lat., 124°48.45′ W. long.;
(54) 47°21.76′ N. lat., 124°47.42′ W. long.;
(55) 47°18.84′ N. lat., 124°46.75′ W. long.;
(56) 47°19.82′ N. lat., 124°51.43′ W. long.;
(57) 47°18.13′ N. lat., 124°54.25′ W. long.;
(58) 47°13.50′ N. lat., 124°54.69′ W. long.;
(59) 47°15.00′ N. lat., 125°00.00′ W. long.;
(60) 47°08.00′ N. lat., 124°59.83′ W. long.;
(61) 47°05.79′ N. lat., 125°01.00′ W. long.;
(62) 47°03.34′ N. lat., 124°57.49′ W. long.;
(63) 47°01.00′ N. lat., 125°00.00′ W. long.;

(64) 46°55.00′ N. lat., 125°02.00′ W. long.;
(65) 46°51.00′ N. lat., 124°57.00′ W. long.;
(66) 46°47.00′ N. lat., 124°55.00′ W. long.;
(67) 46°34.00′ N. lat., 124°38.00′ W. long.;
(68) 46°30.50′ N. lat., 124°41.00′ W. long.;
(69) 46°33.00′ N. lat., 124°32.00′ W. long.;
(70) 46°29.00′ N. lat., 124°32.00′ W. long.;
(71) 46°20.00′ N. lat., 124°39.00′ W. long.;
(72) 46°18.16′ N. lat., 124°40.00′ W. long.;
(73) 46°15.83′ N. lat., 124°27.01′ W. long.;
(74) 46°15.00′ N. lat., 124°30.96′ W. long.;
(75) 46°13.17′ N. lat., 124°37.87′ W. long.;
(76) 46°13.17′ N. lat., 124°38.75′ W. long.;
(77) 46°10.50′ N. lat., 124°42.00′ W. long.;
(78) 46°6.21′ N. lat., 124°41.85′ W. long.;
(79) 46°3.02′ N. lat., 124°50.27′ W. long.;
(80) 45°57.00′ N. lat., 124°45.52′ W. long.;
(81) 45°46.85′ N. lat., 124°45.91′ W. long.;
(82) 45°45.81′ N. lat., 124°47.05′ W. long.;
(83) 45°44.87′ N. lat., 124°45.98′ W. long.;
(84) 45°43.44′ N. lat., 124°46.03′ W. long.;
(85) 45°35.82′ N. lat., 124°45.72′ W. long.;
(86) 45°35.70′ N. lat., 124°42.89′ W. long.;
(87) 45°24.45′ N. lat., 124°38.21′ W. long.;
(88) 45°11.68′ N. lat., 124°39.38′ W. long.;
(89) 44°57.94′ N. lat., 124°37.02′ W. long.;
(90) 44°44.28′ N. lat., 124°50.79′ W. long.;
(91) 44°32.63′ N. lat., 124°54.21′ W. long.;
(92) 44°23.20′ N. lat., 124°49.87′ W. long.;
(93) 44°13.17′ N. lat., 124°58.81′ W. long.;
(94) 43°57.92′ N. lat., 124°58.29′ W. long.;
(95) 43°50.12′ N. lat., 124°53.36′ W. long.;
(96) 43°49.53′ N. lat., 124°43.96′ W. long.;
(97) 43°42.76′ N. lat., 124°41.40′ W. long.;
(98) 43°24.00′ N. lat., 124°42.61′ W. long.;
(99) 43°19.74′ N. lat., 124°45.12′ W. long.;
(100) 43°19.62′ N. lat., 124°52.95′ W. long.;
(101) 43°17.41′ N. lat., 124°53.02′ W. long.;
(102) 42°49.15′ N. lat., 124°54.93′ W. long.;
(103) 42°46.74′ N. lat., 124°53.39′ W. long.;
(104) 42°43.76′ N. lat., 124°51.64′ W. long.;
(105) 42°45.41′ N. lat., 124°49.35′ W. long.;
(106) 42°43.92′ N. lat., 124°45.92′ W. long.;
(107) 42°38.87′ N. lat., 124°43.38′ W. long.;
(108) 42°34.78′ N. lat., 124°46.56′ W. long.;
(109) 42°31.47′ N. lat., 124°46.89′ W. long.;
(110) 42°31.00′ N. lat., 124°44.28′ W. long.;
(111) 42°29.22′ N. lat., 124°46.93′ W. long.;
(112) 42°28.39′ N. lat., 124°49.94′ W. long.;
(113) 42°26.28′ N. lat., 124°47.60′ W. long.;
(114) 42°19.58′ N. lat., 124°43.21′ W. long.;
(115) 42°13.75′ N. lat., 124°40.06′ W. long.;
(116) 42°5.12′ N. lat., 124°39.06′ W. long.;
(117) 41°59.99′ N. lat., 124°37.72′ W. long.;
(118) 42°0.00′ N. lat., 124°37.76′ W. long.;
(119) 41°47.93′ N. lat., 124°31.79′ W. long.;
(120) 41°21.35′ N. lat., 124°30.35′ W. long.;
(121) 41°7.11′ N. lat., 124°25.25′ W. long.;
(122) 40°57.37′ N. lat., 124°30.25′ W. long.;
(123) 40°41.03′ N. lat., 124°33.21′ W. long.;
(124) 40°37.40′ N. lat., 124°38.96′ W. long.;
(125) 40°33.70′ N. lat., 124°42.50′ W. long.;
(126) 40°31.31′ N. lat., 124°41.59′ W. long.;
(127) 40°25.00′ N. lat., 124°36.65′ W. long.;
(128) 40°22.42′ N. lat., 124°32.19′ W. long.;
(129) 40°17.17′ N. lat., 124°32.21′ W. long.;
(130) 40°18.68′ N. lat., 124°50.44′ W. long.;
(131) 40°10.11′ N. lat., 124°28.25′ W. long.;
(132) 40°1.63′ N. lat., 124°17.25′ W. long.;
(133) 39°51.85′ N. lat., 124°10.33′ W. long.;
(134) 39°32.41′ N. lat., 124°0.01′ W. long.;
(135) 38°57.16′ N. lat., 124°1.89′ W. long.;
(136) 38°11.66′ N. lat., 123°30.87′ W. long.;
(137) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(138) 38°00.00′ N. lat., 123°28.84′ W. long.

(v) The 250–fm (457–m) depth contour modified to allow fishing for petrale in winter months of January, February, November, and December and used north of 38° N. lat. as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.71′ N. lat., 125°41.95′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;
(3) 48°08.50′ N. lat., 125°45.00′ W. long.;
(4) 48°06.00′ N. lat., 125°46.50′ W. long.;
(5) 48°03.50′ N. lat., 125°37.00′ W. long.;
(6) 48°01.50′ N. lat., 125°40.00′ W. long.;
(7) 47°57.00′ N. lat., 125°37.00′ W. long.;
(8) 47°55.50′ N. lat., 125°28.50′ W. long.;
(9) 47°58.00′ N. lat., 125°25.00′ W. long.;
(10) 48°00.50′ N. lat., 125°24.50′ W. long.;
(11) 48°03.50′ N. lat., 125°21.00′ W. long.;
(12) 48°02.00′ N. lat., 125°19.50′ W. long.;
(13) 48°00.00′ N. lat., 125°21.00′ W. long.;
(14) 47°58.00′ N. lat., 125°20.00′ W. long.;
(15) 47°58.00′ N. lat., 125°18.00′ W. long.;
(16) 47°52.00′ N. lat., 125°16.50′ W. long.;
(17) 47°49.00′ N. lat., 125°11.00′ W. long.;
(18) 47°46.00′ N. lat., 125°06.00′ W. long.;
(19) 47°44.50′ N. lat., 125°07.50′ W. long.;
(20) 47°42.00′ N. lat., 125°06.00′ W. long.;
(21) 47°38.00′ N. lat., 125°07.00′ W. long.;
(22) 47°30.00′ N. lat., 125°00.00′ W. long.;
(23) 47°28.00′ N. lat., 124°58.50′ W. long.;
(24) 47°28.88′ N. lat., 124°54.71′ W. long.;
(25) 47°27.70′ N. lat., 124°51.87′ W. long.;
(26) 47°24.84′ N. lat., 124°48.45′ W. long.;

(27) 47°21.76′ N. lat., 124°47.42′ W. long.;
(28) 47°18.84′ N. lat., 124°46.75′ W. long.;
(29) 47°19.82′ N. lat., 124°51.43′ W. long.;
(30) 47°18.13′ N. lat., 124°54.25′ W. long.;
(31) 47°13.50′ N. lat., 124°54.69′ W. long.;
(32) 47°15.00′ N. lat., 125°00.00′ W. long.;
(33) 47°08.00′ N. lat., 124°59.82′ W. long.;
(34) 47°05.79′ N. lat., 125°01.00′ W. long.;
(35) 47°03.34′ N. lat., 124°57.49′ W. long.;
(36) 47°01.00′ N. lat., 125°00.00′ W. long.;
(37) 46°55.00′ N. lat., 125°02.00′ W. long.;
(38) 46°51.00′ N. lat., 124°57.00′ W. long.;
(39) 46°47.00′ N. lat., 124°55.00′ W. long.;
(40) 46°34.00′ N. lat., 124°38.00′ W. long.;
(41) 46°30.50′ N. lat., 124°41.00′ W. long.;
(42) 46°33.00′ N. lat., 124°32.00′ W. long.;
(43) 46°29.00′ N. lat., 124°32.00′ W. long.;
(44) 46°20.00′ N. lat., 124°39.00′ W. long.;
(45) 46°18.16′ N. lat., 124°40.00′ W. long.;
(46) 46°15.83′ N. lat., 124°27.01′ W. long.;
(47) 46°15.00′ N. lat., 124°30.96′ W. long.;
(48) 46°13.17′ N. lat., 124°38.76′ W. long.;
(49) 46°10.51′ N. lat., 124°41.99′ W. long.;
(50) 46°6.24′ N. lat., 124°41.81′ W. long.;
(51) 46°3.04′ N. lat., 124°50.26′ W. long.;
(52) 45°56.99′ N. lat., 124°45.45′ W. long.;
(53) 45°49.94′ N. lat., 124°45.75′ W. long.;
(54) 45°49.94′ N. lat., 124°42.33′ W. long.;
(55) 45°45.73′ N. lat., 124°42.18′ W. long.;
(56) 45°45.73′ N. lat., 124°43.82′ W. long.;
(57) 45°41.94′ N. lat., 124°43.61′ W. long.;
(58) 45°41.58′ N. lat., 124°39.86′ W. long.;
(59) 45°38.45′ N. lat., 124°39.94′ W. long.;
(60) 45°35.75′ N. lat., 124°42.91′ W. long.;
(61) 45°24.49′ N. lat., 124°38.20′ W. long.;
(62) 45°14.43′ N. lat., 124°39.05′ W. long.;
(63) 45°14.30′ N. lat., 124°34.19′ W. long.;
(64) 45°8.98′ N. lat., 124°34.26′ W. long.;
(65) 45°9.02′ N. lat., 124°38.81′ W. long.;
(66) 44°57.98′ N. lat., 124°36.98′ W. long.;
(67) 44°56.62′ N. lat., 124°38.32′ W. long.;
(68) 44°50.82′ N. lat., 124°35.52′ W. long.;
(69) 44°46.89′ N. lat., 124°38.32′ W. long.;
(70) 44°50.78′ N. lat., 124°44.24′ W. long.;
(71) 44°44.27′ N. lat., 124°50.78′ W. long.;
(72) 44°32.63′ N. lat., 124°54.24′ W. long.;
(73) 44°23.25′ N. lat., 124°49.78′ W. long.;
(74) 44°13.16′ N. lat., 124°58.81′ W. long.;
(75) 43°57.88′ N. lat., 124°58.25′ W. long.;
(76) 43°56.89′ N. lat., 124°57.33′ W. long.;
(77) 43°53.41′ N. lat., 124°51.95′ W. long.;
(78) 43°51.56′ N. lat., 124°47.38′ W. long.;
(79) 43°51.49′ N. lat., 124°37.77′ W. long.;
(80) 43°48.02′ N. lat., 124°43.31′ W. long.;
(81) 43°42.77′ N. lat., 124°41.39′ W. long.;
(82) 43°24.09′ N. lat., 124°42.57′ W. long.;
(83) 43°19.73′ N. lat., 124°45.09′ W. long.;
(84) 43°15.98′ N. lat., 124°47.76′ W. long.;
(85) 43°4.14′ N. lat., 124°52.55′ W. long.;
(86) 43°4.00′ N. lat., 124°53.88′ W. long.;
(87) 42°54.69′ N. lat., 124°54.54′ W. long.;
(88) 42°45.46′ N. lat., 124°49.37′ W. long.;
(89) 42°43.91′ N. lat., 124°45.90′ W. long.;
(90) 42°38.84′ N. lat., 124°43.36′ W. long.;
(91) 42°34.82′ N. lat., 124°46.56′ W. long.;
(92) 42°31.57′ N. lat., 124°46.86′ W. long.;
(93) 42°30.98′ N. lat., 124°44.27′ W. long.;
(94) 42°29.21′ N. lat., 124°46.93′ W. long.;
(95) 42°28.52′ N. lat., 124°49.40′ W. long.;
(96) 42°26.06′ N. lat., 124°46.61′ W. long.;
(97) 42°21.82′ N. lat., 124°43.76′ W. long.;
(98) 42°17.47′ N. lat., 124°38.89′ W. long.;
(99) 42°13.67′ N. lat., 124°37.51′ W. long.;
(100) 42°13.76′ N. lat., 124°40.03′ W. long.;
(101) 42°5.12′ N. lat., 124°39.06′ W. long.;
(102) 42°2.67′ N. lat., 124°38.41′ W. long.;
(103) 42°2.67′ N. lat., 124°35.95′ W. long.;
(104) 42°0.00′ N. lat., 124°35.88′ W. long.;
(105) 41°59.99′ N. lat., 124°35.92′ W. long.;
(106) 41°56.38′ N. lat., 124°34.96′ W. long.;
(107) 41°53.98′ N. lat., 124°32.50′ W. long.;
(108) 41°50.69′ N. lat., 124°30.46′ W. long.;
(109) 41°48.30′ N. lat., 124°29.91′ W. long.;
(110) 41°47.93′ N. lat., 124°31.79′ W. long.;
(111) 41°21.35′ N. lat., 124°30.35′ W. long.;
(112) 41°7.11′ N. lat., 124°25.25′ W. long.;
(113) 40°57.37′ N. lat., 124°30.25′ W. long.;
(114) 40°41.03′ N. lat., 124°33.21′ W. long.;
(115) 40°37.40′ N. lat., 124°38.96′ W. long.;
(116) 40°33.70′ N. lat., 124°42.50′ W. long.;
(117) 40°31.31′ N. lat., 124°41.59′ W. long.;
(118) 40°25.00′ N. lat., 124°36.65′ W. long.;
(119) 40°22.42′ N. lat., 124°32.19′ W. long.;
(120) 40°17.17′ N. lat., 124°32.21′ W. long.;
(121) 40°18.68′ N. lat., 124°50.44′ W. long.;
(122) 40°10.11′ N. lat., 124°28.25′ W. long.;
(123) 40°1.63′ N. lat., 124°17.25′ W. long.;
(124) 39°51.85′ N. lat., 124°10.33′ W. long.;
(125) 39°32.41′ N. lat., 124°0.01′ W. long.;
(126) 38°57.16′ N. lat., 124°1.89′ W. long.;
(127) 38°11.66′ N. lat., 123°30.87′ W. long.;
(128) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(129) 38°00.00′ N. lat., 123°28.84′ W. long.

(vi) The 50–fm (91–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the

trawl RCA in the months of January and February is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°14.58′ N. lat., 123°9.93′ W. long.;
(17) 38°1.86′ N. lat., 123°9.76′ W. long.;
(18) 37°53.66′ N. lat., 123°12.06′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(vii) The 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°8.32′ N. lat., 123°14.60′ W. long.;
(17) 38°0.27′ N. lat., 123°15.29′ W. long.;
(18) 37°56.93′ N. lat., 123°21.61′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(viii) The 100–fm (183–m) depth contour used between 34°27′ N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 34°27.00′ N. lat., 120°31.74′ W. long.;
(2) 34°21.90′ N. lat., 120°25.25′ W. long.;
(3) 34°24.86′ N. lat., 120°16.81′ W. long.;
(4) 34°22.80′ N. lat., 119°57.06′ W. long.;
(5) 34°18.59′ N. lat., 119°44.84′ W. long.;
(6) 34°15.04′ N. lat., 119°40.34′ W. long.;
(7) 34°14.40′ N. lat., 119°45.39′ W. long.;
(8) 34°12.32′ N. lat., 119°42.41′ W. long.;
(9) 34°9.71′ N. lat., 119°28.85′ W. long.;
(10) 34°4.70′ N. lat., 119°15.38′ W. long.;
(11) 34°3.33′ N. lat., 119°12.93′ W. long.;
(12) 34°2.72′ N. lat., 119°7.01′ W. long.;
(13) 34°3.90′ N. lat., 119°4.64′ W. long.;
(14) 34°1.80′ N. lat., 119°3.23′ W. long.;
(15) 33°59.32′ N. lat., 119°3.50′ W. long.;
(16) 33°59.00′ N. lat., 118°59.55′ W. long.;
(17) 33°59.51′ N. lat., 118°57.25′ W. long.;
(18) 33°58.82′ N. lat., 118°52.47′ W. long.;
(19) 33°58.54′ N. lat., 118°41.86′ W. long.;
(20) 33°55.07′ N. lat., 118°34.25′ W. long.;
(21) 33°54.28′ N. lat., 118°38.68′ W. long.;
(22) 33°51.00′ N. lat., 118°36.66′ W. long.;
(23) 33°39.77′ N. lat., 118°18.41′ W. long.;
(24) 33°35.50′ N. lat., 118°16.85′ W. long.;
(25) 33°32.68′ N. lat., 118°9.82′ W. long.;
(26) 33°34.09′ N. lat., 117°54.06′ W. long.;
(27) 33°31.60′ N. lat., 117°49.28′ W. long.;
(28) 33°16.07′ N. lat., 117°34.74′ W. long.;
(29) 33°7.06′ N. lat., 117°22.71′ W. long.;

(30) 32°53.34′ N. lat., 117°19.13′ W. long.;
(31) 32°46.39′ N. lat., 117°23.45′ W. long.;
(32) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(33) 32°34.22′ N. lat., 117°21.20′ W. long.

(ix) The 150–fm (274–m) depth contour used between 38° N. lat. and the U.S. border with Mexico as a western boundary for both the trawl RCA and the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°59.73′ N. lat., 123°29.85′ W. long.;
(2) 37°51.46′ N. lat., 123°25.16′ W. long.;
(3) 37°44.06′ N. lat., 123°11.44′ W. long.;
(4) 37°35.26′ N. lat., 123°2.29′ W. long.;
(5) 37°14.00′ N. lat., 122°50.00′ W. long.;
(6) 37°1.00′ N. lat., 122°36.00′ W. long.;
(7) 36°58.07′ N. lat., 122°28.35′ W. long.;
(8) 37°0.71′ N. lat., 122°24.53′ W. long.;
(9) 36°57.50′ N. lat., 122°24.98′ W. long.;
(10) 36°58.38′ N. lat., 122°21.85′ W. long.;
(11) 36°55.85′ N. lat., 122°21.95′ W. long.;
(12) 36°52.86′ N. lat., 122°12.89′ W. long.;
(13) 36°48.71′ N. lat., 122°9.28′ W. long.;
(14) 36°46.65′ N. lat., 122°4.10′ W. long.;
(15) 36°51.00′ N. lat., 121°58.00′ W. long.;
(16) 36°44.00′ N. lat., 121°59.00′ W. long.;
(17) 36°38.00′ N. lat., 122°2.00′ W. long.;
(18) 36°26.00′ N. lat., 121°59.05′ W. long.;
(19) 36°22.00′ N. lat., 122°1.00′ W. long.;
(20) 36°19.00′ N. lat., 122°5.00′ W. long.;
(21) 36°14.00′ N. lat., 121°58.00′ W. long.;
(22) 36°10.61′ N. lat., 121°44.51′ W. long.;
(23) 35°50.53′ N. lat., 121°29.93′ W. long.;
(24) 35°46.00′ N. lat., 121°28.00′ W. long.;
(25) 35°38.94′ N. lat., 121°23.16′ W. long.;
(26) 35°26.00′ N. lat., 121°8.00′ W. long.;
(27) 35°7.42′ N. lat., 120°57.08′ W. long.;
(28) 34°42.00′ N. lat., 120°54.00′ W. long.;
(29) 34°29.00′ N. lat., 120°44.00′ W. long.;
(30) 34°22.00′ N. lat., 120°32.00′ W. long.;
(31) 34°21.00′ N. lat., 120°21.00′ W. long.;
(32) 34°24.00′ N. lat., 120°15.00′ W. long.;
(33) 34°22.11′ N. lat., 119°56.63′ W. long.;
(34) 34°19.00′ N. lat., 119°48.00′ W. long.;
(35) 34°15.00′ N. lat., 119°48.00′ W. long.;
(36) 34°8.00′ N. lat., 119°37.00′ W. long.;
(37) 34°7.00′ N. lat., 120°11.00′ W. long.;
(38) 34°13.00′ N. lat., 120°30.00′ W. long.;
(39) 34°9.00′ N. lat., 120°38.00′ W. long.;
(40) 33°58.00′ N. lat., 120°29.00′ W. long.;
(41) 33°51.00′ N. lat., 120°9.00′ W. long.;
(42) 33°38.00′ N. lat., 119°58.00′ W. long.;
(43) 33°38.00′ N. lat., 119°50.00′ W. long.;
(44) 33°46.25′ N. lat., 119°49.32′ W. long.;
(45) 33°53.82′ N. lat., 119°53.42′ W. long.;
(46) 33°59.00′ N. lat., 119°21.00′ W. long.;
(47) 34°2.00′ N. lat., 119°13.00′ W. long.;
(48) 34°1.52′ N. lat., 119°4.50′ W. long.;
(49) 33°58.83′ N. lat., 119°3.76′ W. long.;
(50) 33°56.55′ N. lat., 118°40.50′ W. long.;
(51) 33°51.00′ N. lat., 118°38.00′ W. long.;
(52) 33°39.63′ N. lat., 118°18.75′ W. long.;
(53) 33°35.44′ N. lat., 118°17.57′ W. long.;
(54) 33°31.98′ N. lat., 118°12.59′ W. long.;
(55) 33°33.25′ N. lat., 117°54.15′ W. long.;
(56) 33°31.43′ N. lat., 117°49.84′ W. long.;
(57) 33°16.53′ N. lat., 117°36.13′ W. long.;
(58) 33°6.51′ N. lat., 117°24.11′ W. long.;
(59) 32°54.11′ N. lat., 117°21.45′ W. long.;
(60) 32°46.15′ N. lat., 117°24.26′ W. long.;
(61) 32°41.97′ N. lat., 117°22.10′ W. long.;
(62) 32°39.00′ N. lat., 117°28.13′ W. long.; and
(63) 32°34.84′ N. lat., 117°24.62′ W. long.

(x) The 150–fm (274–m) depth contour used around islands/seamounts off the state of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:

(A) San Nicholas Island
(1) 33°32.73′ N. lat., 119°47.00′ W. long.;
(2) 33°14.00′ N. lat., 119°15.00′ W. long.;
(3) 33°12.00′ N. lat., 119°18.00′ W. long.;
(4) 33°11.00′ N. lat., 119°26.00′ W. long.;
(5) 33°13.13′ N. lat., 119°43.19′ W. long.;
(6) 33°13.11′ N. lat., 119°53.05′ W. long.;
(7) 33°30.00′ N. lat., 119°52.00′ W. long.; and
(8) 33°32.73′ N. lat., 119°47.00′ W. long.

(B) Santa Catalina Island
(1) 33°19.00′ N. lat., 118°15.00′ W. long.;
(2) 33°26.00′ N. lat., 118°22.00′ W. long.;
(3) 33°28.00′ N. lat., 118°28.00′ W. long.;
(4) 33°30.00′ N. lat., 118°31.00′ W. long.;
(5) 33°31.00′ N. lat., 118°37.00′ W. long.;
(6) 33°29.00′ N. lat., 118°41.00′ W. long.;
(7) 33°23.00′ N. lat., 118°31.00′ W. long.;
(8) 33°21.00′ N. lat., 118°33.00′ W. long.;
(9) 33°18.00′ N. lat., 118°28.00′ W. long.;
(10) 33°16.00′ N. lat., 118°13.00′ W. long.; and
(11) 33°19.00′ N. lat., 118°15.00′ W. long.

(C) San Clemente Island
(1) 32°48.50′ N. lat., 118°18.34′ W. long.;
(2) 32°56.00′ N. lat., 118°29.00′ W. long.;
(3) 33°3.00′ N. lat., 118°34.00′ W. long.;
(4) 33°5.00′ N. lat., 118°38.00′ W. long.;
(5) 33°3.00′ N. lat., 118°40.00′ W. long.;
(6) 32°48.00′ N. lat., 118°31.00′ W. long.;
(7) 32°43.00′ N. lat., 118°24.00′ W. long.; and
(8) 32°48.50′ N. lat., 118°18.34′ W. long.

(D) Santa Barbara Island
(1) 33°36.06′ N. lat., 118°57.15′ W. long.;
(2) 33°20.64′ N. lat., 118°59.39′ W. long.;

(3) 33°23.00′ N. lat., 119°7.00′ W. long.;
(4) 33°43.00′ N. lat., 119°14.00′ W. long.;
(5) 33°46.00′ N. lat., 119°12.00′ W. long.; and
(6) 33°36.06′ N. lat., 118°57.15′ W. long.

(E) Orange County Seamount
(1) 33°25.00′ N. lat., 118°1.00′ W. long.;
(2) 33°25.00′ N. lat., 117°58.00′ W. long.;
(3) 33°23.00′ N. lat., 117°58.00′ W. long.;
(4) 33°23.00′ N. lat., 118°1.00′ W. long.; and
(5) 33°25.00′ N. lat., 118°1.00′ W. long.

(20) *Rockfish categories.* Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope (scientific names appear in Table 2). Nearshore rockfish are further divided into shallow nearshore and deeper nearshore categories south of 40°10′ N. lat. Trip limits are established for ''minor rockfish'' species according to these categories (see Tables 2–5).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2, which includes California scorpionfish.

(i) Shallow nearshore rockfish consists of black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish.

(ii) Deeper nearshore rockfish consists of black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish.

(iii) California scorpionfish.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.

(c) Slope rockfish consists of POP, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

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Table 2 – Minor Rockfish Species (excludes thornyheads)

North of 40°10' N. lat.	South of 40°10' N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d),) size limits (see paragraph A.(6)), seasons (see paragraph A.(7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(20)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South). A header in Table 3 (North), Table 3 (South), Table 4 (North), and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. [Note: Between a line drawn due south from Point Fermin (33° 42′ 30'' N. lat.; 118° 17′ 30'' W. long.) and a line drawn due west from the Newport, South Jetty (33° 35′ 37'' N. lat.; 117° 52′ 50'' W. long.,) vessels fishing with hook-and-line- and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m).]

Management measures may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6,000 lb/ 2 months
5	Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/ 2 months				7,000 lb/ 2 months
6	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
7	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
8	**Flatfish**						
9	All other flatfish[4/]	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
10	Petrale sole	Not limited					Not limited
11	Rex sole	Included in all other flatfish					
12	Arrowtooth flounder	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
13	**Whiting[5/]**						
14	mid-water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
15	**Other Fish[9/]**	Not limited					
16	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
17	**Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
18	**Widow rockfish - mid-water trawl**						
19	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
20	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
21	**Yellowtail**						
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
23	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 3,000 lb/ month					
24	**Minor nearshore rockfish**	300 lb/ month					
25	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):						
	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months					
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	30,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6000 lb/ 2 months
9	Longspine thornyhead	8,000 lb /2 months	9,000 lb/ 2 months				7000 lb/ 2 months
10	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
11	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
12	**Flatfish**						
13	All other flatfish[4/]	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14	Petrale sole	No limit					No limit
15	Rex sole	Included in all other flatfish					
16	Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17	**Whiting[5/]**						
18	mid water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
19	**Other Fish[9/]**	Not limited					
20	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
21	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
22	**Widow rockfish**						
23	mid water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
24	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
25	**Bocaccio**	CLOSED[6/]					
26	**Cowcod**	CLOSED[6/]					
27	**Minor nearshore rockfish**	300 lb/ month					
28	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

<table>
<tr><th></th><th></th><th>JAN-FEB</th><th>MAR-APR</th><th>MAY-JUN</th><th>JUL-AUG</th><th>SEP-OCT</th><th>NOV-DEC</th></tr>
<tr><td colspan="2">Rockfish Conservation Area[8/] (RCA):</td><td colspan="6"></td></tr>
<tr><td colspan="2">North of 46°16' N. lat.</td><td colspan="6">shoreline - 100 fm</td></tr>
<tr><td colspan="2">46°16' N. lat. - 40°10' N. lat.</td><td colspan="6">27 fm - 100 fm</td></tr>
<tr><td colspan="2">South of 40°10' N. lat.</td><td colspan="6">20 fm - 150 fm</td></tr>
<tr><td>1</td><td>Minor slope rockfish</td><td>1,800 lb/ 2 months</td><td colspan="4">No more than 25% of the weight of sablefish landed/ trip</td><td>1,800 lb/ 2 months</td></tr>
<tr><td>2</td><td>Splitnose</td><td colspan="6">1,800 lb/ 2 months</td></tr>
<tr><td>3</td><td>Pacific ocean perch</td><td colspan="6">1,800 lb/ 2 months</td></tr>
<tr><td>4</td><td>Sablefish</td><td colspan="6">300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months</td></tr>
<tr><td>5</td><td>Longspine thornyhead</td><td colspan="6">9,000 lb/ 2 months</td></tr>
<tr><td>6</td><td>Shortspine thornyhead</td><td colspan="6">2,000 lb/ 2 months</td></tr>
<tr><td>7</td><td>Dover sole</td><td colspan="6" rowspan="5">5,000 lb/ month</td></tr>
<tr><td>8</td><td>Arrowtooth flounder</td></tr>
<tr><td>9</td><td>Petrale sole</td></tr>
<tr><td>10</td><td>Rex sole</td></tr>
<tr><td>11</td><td>All other flatfish[2/]</td></tr>
<tr><td>12</td><td>Whiting[3/]</td><td colspan="6">10,000 lb/ trip</td></tr>
<tr><td>13</td><td>Minor shelf rockfish, widow, and yellowtail rockfish[4/]</td><td colspan="6">200 lb/ month</td></tr>
<tr><td>14</td><td>Canary rockfish</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>15</td><td>Yelloweye rockfish</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>16</td><td>Cowcod</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>17</td><td>Minor nearshore rockfish</td><td colspan="6">3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[6/]</td></tr>
<tr><td>18</td><td>Lingcod[7/]</td><td colspan="2">CLOSED[5/]</td><td colspan="3">400 lb/ month</td><td>CLOSED[5/]</td></tr>
</table>

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ TThe whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[7/] (RCA):	20 fm - 150 fm			20 fm - 150 fm -- Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm	20 fm - 150 fm	
1 **Minor slope rockfish[4/]**						
2 40°10' - 38° N. lat.	1,800 lb/ 2 months	No more than 25% of weight of sablefish landed/ trip				1,800 lb/ 2 months
3 South of 38° N. lat.	30,000 lb/ 2 months					
4 **Splitnose**						
5 40°10' - 38° N. lat.	1,800 lb/ 2 months					
6 South of 38° N. lat.	20,000 lb/ 2 months					
7 **Sablefish**						
8 40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
9 South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10 **Longspine thornyhead**	9,000 lb/ 2 months					
11 **Shortspine thornyhead**	2,000 lb/ 2 months					
12 **Dover sole** 13 **Arrowtooth flounder** 14 **Petrale sole** 15 **Rex sole** 16 **All other flatfish[2/]**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 5 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 5 lb (2.27 kg) of weight per line are not subject to the RCAs.					
17 **Whiting[3/]**	10,000 lb/ trip					
18 **Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19 **Canary rockfish**	CLOSED[5/]					
20 **Yelloweye rockfish**	CLOSED[5/]					
21 **Cowcod**	CLOSED[5/]					
22 **Bocaccio**	CLOSED[5/]					
23 **Minor nearshore rockfish**						
24 Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
25 Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
26 California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
27 **Lingcod[6/]**	CLOSED[5/]		400 lb/ month, when nearshore open			CLOSED[5/]

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e) that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish.* The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear.

(a) *Trawl trip and size limits.* Management measures for the limited entry trawl fishery for sablefish are listed in Table 3 (North) and Table 3 (South).

(b) *Nontrawl (fixed gear) trip and size limits.* To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 663.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2003, and ends at 12 noon l.t. on October 31, 2003. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2003, the following limits would be in effect: Tier 1, 53,000 lb (24,040 kg); Tier 2, 24,000 lb (10,886 kg); Tier 3, 14,000 lb (6,350 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2003, count against the cumulative limits associated with the permit(s) registered for use with that vessel.

(ii) *Daily trip limit.* Daily and/or weekly sablefish trip limits listed in Table 4 (North) and Table 4 (South) apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 (South) apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(iii) *Participating in both the primary and daily trip limit fisheries.* A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2003, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) Allocations. The non-tribal allocations, based on percentages that are applied to the commercial OY of 121,200 mt in 2003 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) *Catcher/processor sector*—41,288 mt (34 percent);

(ii) *Mothership sector*—29,080 mt (24 percent);

(iii) *Shore-based sector*—50,904 mt (42 percent). No more than 5 percent (2,545 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2003.

(iv) *Tribal allocation*—See paragraph V.

(b) *Seasons.* The 2003 primary seasons for the whiting fishery start on the same dates as in 2002, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°-40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits.* (i) *Before and after the regular season.* The ''per trip'' limit for whiting before and after the regular season for the shore-based sector is announced in Table 3 (North) and Table 3 (South), as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100 fm (183 m) contour.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during ax fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish.* The regulations at 50 CFR 660.323(a)(1) state: ''The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.'' These ''per trip'' limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 (North) and Table 5 (North) of NMFS Actions. The crossover provisions at paragraphs A.(12) do not apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d)), size limits (see paragraph A.(6)), seasons (see paragraph A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10′ N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33°42′30″ N. lat.; 118°17′30″ W. long.)

and a line drawn due west from the Newport South Jetty (33°35′37″ N. lat.; 117°52′50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August.] For vessels participating in exempted trawl fisheries, the RCAs are the same as those for limited entry trawl gear. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph B.(4).)

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Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. NMFS Actions before using this table

<table>
<tr><th></th><th></th><th>JAN-FEB</th><th>MAR-APR</th><th>MAY-JUN</th><th>JUL-AUG</th><th>SEP-OCT</th><th>NOV-DEC</th></tr>
<tr><td colspan="8">Rockfish Conservation Area[8/] (RCA):</td></tr>
<tr><td></td><td>North of 46°16' N. lat.</td><td colspan="6">0 fm - 100 fm</td></tr>
<tr><td></td><td>46°16' N. lat. - 40°10' N. lat.</td><td colspan="6">27 fm - 100 fm</td></tr>
<tr><td>1</td><td>Minor slope rockfish[2/]</td><td colspan="6">Per trip, no more than 25% of weight of the sablefish landed</td></tr>
<tr><td>2</td><td>Pacific ocean perch</td><td colspan="6">100 lb/ month</td></tr>
<tr><td>3</td><td>Sablefish</td><td colspan="6">300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months</td></tr>
<tr><td>4</td><td>Thornyheads</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>5</td><td>Dover sole</td><td colspan="6" rowspan="5">3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.</td></tr>
<tr><td>6</td><td>Arrowtooth flounder</td></tr>
<tr><td>7</td><td>Petrale sole</td></tr>
<tr><td>8</td><td>Rex sole</td></tr>
<tr><td>9</td><td>All other flatfish[3/]</td></tr>
<tr><td>10</td><td>Whiting</td><td colspan="6">300 lb/ month</td></tr>
<tr><td>11</td><td>Minor shelf rockfish, widow and yellowtail rockfish[2/]</td><td colspan="6">200 lb/ month</td></tr>
<tr><td>12</td><td>Canary rockfish</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>13</td><td>Yelloweye rockfish</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>14</td><td>Cowcod</td><td colspan="6">CLOSED[5/]</td></tr>
<tr><td>15</td><td>Minor nearshore rockfish</td><td colspan="6">3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[4/]</td></tr>
<tr><td>16</td><td>Lingcod[6/]</td><td colspan="2">CLOSED[5/]</td><td colspan="3">300 lb/ month</td><td>CLOSED[5/]</td></tr>
<tr><td>17</td><td>Other Fish[7/]</td><td colspan="6">Not limited</td></tr>
<tr><td>18</td><td colspan="7">PINK SHRIMP EXEMPTED TRAWL (not subject to RCAs)</td></tr>
<tr><td>19</td><td>North</td><td colspan="6">Effective April 1 - October 31, 2003: groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.</td></tr>
<tr><td>20</td><td colspan="7">PRAWN EXEMPTED TRAWL (not subject to RCAs)</td></tr>
<tr><td>21</td><td>North</td><td colspan="6">Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.</td></tr>
</table>

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
		20 fm - 150 fm			20 fm - 150 fm	20 fm - 150 fm	
	South of 40°10' N. lat.	Between a line drawn due south from Point Fermin, CA (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing with hook & line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm					
1	**Minor slope rockfish[2/]**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 5 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 5 lb (2.27 kg) of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**Rex sole**						
15	**All other flatfish[3/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]					
19	**Yelloweye rockfish**	CLOSED[5/]					
20	**Cowcod**	CLOSED[5/]					
21	**Bocaccio**	CLOSED[5/]					
22	**Minor nearshore rockfish**						
23	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
26	**Lingcod[4/]**	CLOSED[5/]		300 lb/ month, when nearshore open			CLOSED[5/]
27	**Other Fish[6/]**	Not limited					
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*						
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**						
31	**EXEMPTED TRAWL Rockfish Conservation Area[8/] (RCA):**						
32	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
33	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
34	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.* [Note: The States of California and Washington will likely prohibit trawling for spot prawn beginning in 2003, while the State of Oregon will likely begin phasing out trawling for spot prawn in 2003.] Trip limits and RCAs for groundfish retained in the spot and ridgeback prawn, California halibut, or sea cucumber fisheries are in Table 5 (North) and Table 5 (South).

(a) *State law.* The trip limits in Table 5(North) and Table 5(South) are not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(b) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA, and;

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: ''No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means ''the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.''

(c) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA, and;

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* Trip limits for groundfish retained in the pink shrimp fishery are in Table 5 (North) and Table 5 (South). Notwithstanding section A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally managed groundfish.

(1) *Washington.* For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(a) *Yelloweye Rockfish Conservation Area.* The YRCA is a ''C-shaped'' area which is closed to recreational groundfish and halibut fishing. The coordinates for the YRCA are defined at A.(19).

(b) *Rockfish.* In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10–rockfish per day bag limit, of which no more than 1 may be canary rockfish. Taking and retaining yelloweye rockfish is prohibited.

(c) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31. In areas seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open (i.e., between March 16–October 15), there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no more than 1 may be canary rockfish, no more than 1 may be yelloweye rockfish and when the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*) are open, the first Pacific halibut taken of 32 in (81 cm) or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take, retain, possess or land yelloweye rockfish or canary rockfish.

(3) *California.* Seaward of California (north and south of 40°10′ N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20–fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas.

(a) *North of 40°10′ N. lat.* North of 40°10′ N. lat. to the California/Oregon border, California's recreational groundfish fishery will generally conform with Oregon's recreational regulations (see D.(2)). For each person engaged in recreational fishing seaward of California north of 40°10′ N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulation (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin.''

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for the RCG Complex is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, 1 may be canary rockfish, and no more than 1 per day up to a maximum of two per boat may be yelloweye rockfish. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 greenlings (kelp and/or rock greenlings) per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) total length and kelp and rock greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned

rockfish fillets may be no smaller than 6.5 in (16.6 cm). ''Brown-skinned'' rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(ii) *Lingcod.*

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/fileting.* Lingcod filets may be no smaller than 16 in. (41 cm) in length .

(b) *South of 40°10′ N. lat.* For each person engaged in recreational fishing seaward of California south of 40°10′ N. lat., the following seasons, bag limits, size limits and closed areas apply:

(i) *Closed Areas.*

(A) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, for coordinates described in Federal regulations at 50 CFR 660.304(c), except that fishing for sanddabs is permitted subject to the provisions in paragraph D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfishes) is permitted in waters shoreward of the 20- fm (37–m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

(B) South of 40°10′ N. lat., recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20–fm (37–m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20–fm (37–m) depth contour subject to the provisions in paragraph D.(3)(iv).

(ii) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin.''

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of 2–hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day, of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 groundfish per day may be greenlings (kelp and/or rock greenlings) and no more than 3 groundfish per day may be cabezon. Lingcod, California scorpionfish, and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) and kelp and rock greenling may be no smaller than 12 in (30 cm).

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). ''Brown-skinned'' rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *California scorpionfish.* California scorpionfish only occur south of 40°10′ N. lat. (A) Seasons. South of 40°10′ N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is permitted only inside the 20–fm (37–m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33 42′30'' N. lat.; 118 17′30'' W. long.) and a line drawn due west from the Newport South Jetty (33 35′37'' N. lat.; 117 52′50'' W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50–fm (91–m) during July-August), subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas where the recreational season for California scorpionfish is open, and the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/filleting.* California scorpionfish fillets may be no smaller than 5 in (12.8 cm).

(iv) *Lingcod.* (A) *Seasons.* South of 40°10′ N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20 fm (37 m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of 2–hooks and one line when fishing for lingcod, and the bag limit is 2 lingcod per day. Lingcod do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/filleting.* Lingcod fillets may be no smaller than 16 in. (41 cm) in length.

(iv) *Sanddabs.* South of 40°10′ N. lat., recreational fishing for sanddabs is permitted both shoreward and seaward of the 20–fm (37–m) depth contour (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10′ N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20- fm (37–m) depth contour subject to a limit of up to 5–hooks ''Number 2'' or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (45 kg) of weight per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

V. Washington Coastal Tribal Fisheries

The legal basis for and background information on groundfish allocations harvest by the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) with treaty rights to groundfish is described in the proposed

rule to implement the 2003 groundfish specifications and management measures in the Proposed Rules section of the January 7, 2003 issue of the **Federal Register**.

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30'' N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00'' N. lat.) and Leadbetter Point (46°38′10'' N. lat.).

(2) Thornyheads are subject to a 300–lb (136–kg) trip limit.

(3) Canary rockfish are subject to a 300–lb (136–kg) trip limit.

(4) Yelloweye rockfish are subject to a 100–lb (45–kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per two-month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300–lb (136–kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300–lb (136–kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300–lb (136–kg) daily trip limit and a 900–lb (408–kg) weekly limit.

D. Pacific whiting

The tribal allocation is 25,000 mt.

Classification

These final management measures for January 1 through February 28, 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and comment would be impracticable and contrary to the public interest.

The January-February management measures are intended to protect overfished and other depressed stocks while also allowing as much harvest of healthy stocks as possible. As explained above, delay in implementation of these regulatory measures could cause harm to some stocks and would require unnecessarily restrictive measures later in the year to make up for the late implementation. Because the 2002 measures are not strict enough, leaving these measures in place could cause harm to some stocks. Much of the data necessary for these specifications and management measures came from the 2002 fishing year and new stock assessments were not available until June. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, it is impracticable and contrary to the public interest to publish these measures in the **Federal Register** and to take public comment on the measures prior to January 1, 2002. It would be impracticable because, as explained above, providing prior notice would delay the effective date of these measures and the January-February 2002 measures would remain in place. Because the 2002 measures are not conservative enough, they do not meet the Council's rebuilding goals for 2003. Leaving the 2002 measures in place for 2003 could cause harm to some stocks.

For the reasons above, the AA also finds good cause under 5 U.S.C. 553(d) to waive the requirement to delay for 30 days the effective date of the rule.

Because there is no requirement to provide for prior notice and opportunity for public comment on this rule the analytical requirements of the Regulatory Flexibility Act do not apply. However, as described above, the January-February 2003 management measures are based on the overall analysis underlying the 2003 specifications and March-December 2003 management measures which are proposed in the Proposed Rules section of this issue of the **Federal Register**. The Council's Initial Regulatory Flexibility analysis prepared for the 2003 specifications and management measures considers the effects of the January and February management measures on the fisheries.

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

Pursuant to Executive Order 13175, this emergency rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocation or regulations specific to the tribes, in writing, before the first of the two autumn groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The tribal management measures in this final rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this emergency rule.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California).

During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's

Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

Because prior notice and opportunity for public comment are not required for this emergency rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. However, as described above, the January-February 2003 management measures are based on the overall analysis underlying the 2003 specifications and March-December 2003 management measures which are proposed in the Proposed Rules section of this issue of the **Federal Register**. The Council's Initial Regulatory Flexibility analysis prepared for the 2003 specifications and management measures considers the effects of the January and February management measures on the fisheries.

List of Subjects in 50 CFR Part 660

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

Dated: December 20, 2002.

Rebecca Lent,

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

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

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

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

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

2. In § 660.302, the definition for ''Open access fishery'' is suspended and a definition for ''Open access fishery (for the period January 1, 2003 to February 28, 2003)'' is temporarily added to read as follows:

§ 660.302 Definitions.

* * * * *

Open access fishery (for the period January 1, 2003 to February 28, 2003) means the fishery composed of vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery. Any commercial fishing vessels that does not have a limited entry permit and which lands groundfish in any commercial fishery is a participant in the open access fishery.

* * * * *

3. In § 660.304, paragraphs (a) through (f) are suspended and paragraphs (g) through (j) are temparily added to read as follows:

§ 660.304 Management areas.

* * * * *

(g) *Management areas*—(1) *Vancouver*. (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48 deg.35′75″ N. lat., 124 deg.43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48 deg.29′37.19″ N. lat., 124 deg.43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48 deg.29′37.19″	124 deg.43′33.19″
2	48 deg.30′11″	124 deg.47′13″
3	48 deg.30′22″	124 deg.50′21″
4	48 deg.30′14″	124 deg.54′52″
5	48 deg.29′57″	124 deg.59′14″
6	48 deg.29′44″	125 deg.00′06″
7	48 deg.28′09″	125 deg.05′47″
8	48 deg.27′10″	125 deg.08′25″
9	48 deg.26′47″	125 deg.09′12″
10	48 deg.20′16″	125 deg.22′48″
11	48 deg.18′22″	125 deg.29′58″
12	48 deg.11′05″	125 deg.53′48″
13	47 deg.49′15″	126 deg.40′57″
14	47 deg.36′47″	127 deg.41′23″
15	47 deg.22′00″	127 deg.41′23″
16	46 deg.42′05″	128 deg.51′56″
17	46 deg.31′47″	129 deg.07′39″

(iii) The southern limit is 47 deg.30′ N. lat.

(2) *Columbia*. (i) The northern limit is 47 deg.30′ N. lat.

(ii) The southern limit is 43 deg.00′ N. lat.

(3) *Eureka*. (i) The northern limit is 43 deg.00′ N. lat.

(ii) The southern limit is 40 deg.30′ N. lat.

(4) *Monterey*. (i) The northern limit is 40 deg.30′ N. lat.

(ii) The southern limit is 36 deg.00′ N. lat.

(5) *Conception*. (i) The northern limit is 36 deg.00′ N. lat.

(ii) The southern limit is the U.S.–Mexico International Boundary, which

is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32 deg.35′22″	117 deg.27′49″
2	32 deg.37′37″	117 deg.49′31″
3	31 deg.07′58″	118 deg.36′18″
4	30 deg.32′31″	121 deg.51′58″

(h) Commonly used geographic coordinates—

(1) Cape Falcon, OR--45°46′ N. lat.

(2) Cape Lookout, OR--45°20′15″ N. lat.

(3) Cape Blanco, OR--42°50′ N. lat.

(4) Cape Mendocino, CA--40°30′ N. lat.

(5) North/South management line--40°10′ N. lat.

(6) Point Arena, CA--38°57′30″ N. lat.

(7) Point Conception, CA--34°27' N. lat.

(i) *Cowcod Conservation Areas (CCAs)*. (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;
and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02′ W. long.;
32°42′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02′ W. long.;
and connecting back to 32°42′ N. lat., 118°02′ W. long.

(j) *International boundaries*. (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the ''3-mile limit'').

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

* * * * *

4. In § 660.322, paragraph (b)(5) is suspended and paragraphs (b)(6) and (b)(7) are temporarily added to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(b) * * *

(6) *Large and small footrope trawl gear.* Large footrope trawl gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(7) *Pelagic or ''midwater'' trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. The footrope of pelagic gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of pelagic trawl gear must be bare and may not be suspended with chains or any other materials. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16–inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a ''skirt'') may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

* * * * *

[FR Doc. 02–32755 Filed 12–31–02; 1:23 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–2300–01; I.D. 112502C]

RIN 0648–AQ18

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the 2003 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and State waters off the coasts of Washington, Oregon, and California. The proposed rule includes the levels of the acceptable biological catch (ABC) and optimum yields (OYs). The commercial OYs (the total catch OYs reduced by tribal allocations and by amounts expected to be taken in recreational and compensation fisheries, which is when a portion of the OY for a groundfish species is used as whole or partial compensation for resource surveys that were conducted using private vessels) proposed in this rule would be allocated between the limited entry and open access fisheries and between different sectors of the limited entry fleet. Proposed management measures for 2003 are intended to prevent overfishing; rebuild overfished species; reduce and minimize the bycatch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Comments must be received no later than 5 p.m., local time (l.t.,) on February 6, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to 562–980–4047. Comments will not be accepted if submitted via e-mail or the internet. Information relevant to this proposed rule, which includes a draft environmental impact statement, is available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su__docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org.*

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that OYs be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Throughout 2002, the Council has been developing revisions to its specifications and management measures process, through proposed Amendment 17 to the FMP. Among other procedural changes, Amendment 17 would revise the NMFS publication process for the specifications and management measures. Historically, the Council has developed annual specifications and management measures in a public two-meeting process (formerly at its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures were effective until the specifications and management measures for the following year were published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F.Supp. 2d 1149 (N.D.Cal., 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications through publication of proposed and final rules.

Amendment 17 was recently adopted by the Council, but has not yet been submitted for NMFS for approval. NMFS must still comply with the Court's Order for a public notice and comment period on the 2003 specifications and management measures. The Council had its initial meeting regarding these measures in June, and finalized its 2003 specifications and management measures recommendations at its September 9–13, 2002, meeting in Portland, OR. The Council could not act earlier in the year because the new science upon which the specifications and management measures were based was not ready until June.

For 2003, the Council has recommended implementing depth-based management measures, with large closed areas intended to prevent vessels from operating in waters where overfished species are commonly found. NMFS and the Council felt that these management changes were significant enough to warrant analysis via an environmental impact statement (EIS). An EIS is a National Environmental Policy Act analysis document that requires a series of public review and comment periods at different document drafting stages. Given the complexity of the annual specifications and management measures and the need for EIS-related public review periods, NMFS did not have enough time to publish a proposed rule, receive public comments, and implement a final rule by January 1, 2003. NMFS is publishing this proposed rule for the entire 2003 specifications and management measures package to comply with the Court's Order to make such regulatory packages available for public comment prior to implementation. To ensure that adequately conservative management measures are in place by January 1, 2003, NMFS has also published an emergency rule in the Final Rules

section of this January 7, 2003 edition that implements groundfish management measures for January 1 through February 28, 2003.

Specifications and management measures proposed for 2003 are designed to rebuild overfished stocks through constraining direct and incidental mortality, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP.

I. Proposed Specifications

Proposed fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management), and the allocation of commercial OYs between the open access and limited entry segments of the fishery. These specifications include fish caught in State ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

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Table 1a. 2003 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (Oys), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch)	Allocations total catch			
									Limited Entry		Open Access	
Species	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	841					841	651	284	230	81.0	54	19.0
Pacific Cod	3,200		c/			3,200	3,200	3,200	--	--	--	--
Pacific Whiting d/	188,000					188,000	148,200	121,200	--	--	--	--
Sablefish e/ (north of 36°)	8,209				--	8,209	6,500	5,767	5,225	90.6	542	9.4
Sablefish f/ (south of 36°)	--				441	441	294	294	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,318	--	--	--	--
English sole	2,000		1,100			3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder	5,800					5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	689			--		689	377	374	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,871					3,871	832	781	757	97.0	23	3.0
Canary m/	272					272	44	23	20	87.7	2.8	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			198		198	≤20	14	8	52.7	6	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	2,717	2,492	91.7	226	8.3
Shortspine thornyhead r/ north of 34°27'	1,004					1,004	955	941	939	99.7	3	0.27
Longspine thornyhead s/ north of 36°	2,461				--	2,461	2,461	2,434	--	--	--	--
south of 36° t/	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Darkblotched v/	205					205	172	170		--	170	-
Yelloweye w/	52					52	22	9.5	--	--	--	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Comme r-cial OY (Total Catch	Allocations total catch			
	Vancou- ver	Colum- bia	Eureka	Mont- erey	Concep- tion	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North x/	4,795			--		4,795	3,056	2,292	2,102	91.7	190	8.3
Minor Rockfish South y/	--			3,506		3,506	1,894	1,401	780	55.7	621	44.3
Remaining Rockfish	2,727			854		--	--	--	--	-	-	--
bank z/	c/			350		350	--	--	--	--	--	--
black aa/	615		500			1,115	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - north	8					318	--	--	--	--	--	--
chilipepper- north	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--
yellowtail- south				116		116	--	--	--	--	--	--
Other rockfish cc/	2,068			2,652		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	-	--	--	--	-

Table 1b. 2003 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial OY for minor rockfish and HG for depth sub-groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	4,794	3,056	750	2,292	2,102	91.7	190	8.3
Nearshore		928	740	188				
Shelf		968	10	954				
Slope		1,160	0	1,156				
Minor Rockfish South y/	3,506	1,894	493	1,401	780	55.7	621	44.3
Nearshore		541	433	108				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment that included parts of Canadian waters was done in 2000 and updated for 2001. Following the assessment, lingcod was believed to be at 15 percent of its unfished biomass coastwide. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total biomass for that area. The ABC of 841 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 651 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to Bmsy by the year 2009 (Tmax). The total catch OY is reduced by 355 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 4.3 mt for the amount estimated to be taken in non-groundfish fisheries, and by 5.2 mt for the amount estimated to be taken in the tribal fishery, resulting in a commercial OY of 284 mt. The open access total catch allocation is 54 mt (19 percent of the commercial OY) and the open access landed catch value is 43 mt. The limited entry total catch allocation is 230 mt and the landed catch value is 184 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are estimated to land about 5.2 mt of lingcod in 2003, but do not have a specific allocation at this time.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting - The most recent stock assessment was prepared in 2002, at which time the whiting stock was believed to be below 25 percent of its unfished biomass. Whiting was declared overfished on April 15, 2002 (67 FR 18117). The U.S.-Canada ABC of 235,000 mt is based on the 2002 assessment results with the application of an Fmsy

proxy harvest rate of 45%. In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80 percent of the coastwide OY (185,325 mt) and is based on the application of the 40-10 harvest rate policy. The total catch OY is further reduced by 25,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 121,200 mt. The commercial OY is allocated between the sectors with 42 percent (50,904 mt) going to the shore-based sector, 34 percent (41,288 mt) going to the catcher/processor sector, and 24 percent (29,080 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N. lat. - NMFS did a new sablefish assessment in 2001 for the area north of Point Conception (34°27'N lat.) and updated it for 2002. Following the assessment update, sablefish north of 34° 27'N lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (8,459 mt) is based on environmentally driven projections with the Fmsy proxy of F45%. The ABC for the management area north of 36° N. lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N. lat.is 6,500 mt and is 97.04 percent of the OY from the surveyed area with a risk averse precautionary adjustment. The total catch OY is reduced by 10 percent (650 mt) for the tribal set aside, by 11.1 mt for compensation to vessels that conducted resource surveys, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (5,767 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 542 mt. The limited entry total catch OY is 5,225 mt. The limited entry total catch OY is further divided with 58 percent (3,031 mt) allocated to the trawl fishery and 42 percent (2,194 mt) allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside. Discard rates will be applied as follows: 21 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. Landed catch OYs are 2,364 mt for limited entry trawl, excluding the at-sea whiting fishery, 2,019 mt for limited entry fixed gear, 499 mt for open access, and 631 mt for the tribal fisheries.

f/ Sablefish south of 36° N. lat. - The ABC of 441 mt is the sum of 250 mt (2.96 percent of the ABC from the 2002 survey based assessment update) and 191 mt (based on historical landings). The total catch OY (294 mt) is the sum of 198 mt (2.96 percent of the OY from the 2002 update of the survey based assessment with a risk averse precautionary adjustment) and 96 mt (that portion of the ABC based on historical landings which was reduced by 50 percent to address uncertainty, due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 271 mt.

g/ Dover sole north of 34° 27'N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 62.4 mt for compensation to vessels that conducted resource surveys, 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,318 mt. Discards are assumed to be 5 percent, resulting in a landed catch OY of 7,006 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was declared overfished on March 3, 1999. The ABC (689 mt) was projected from the 2000 assessment which was updated for 2001 and is based on an Fmsy proxy of F50%. The OY (377 mt) is based on a 70 percent probability of

rebuilding the stock to Bmsy by the year 2041 (Tmax). The OY is reduced by 3 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 374 mt. The landed catch value is 314 mt, and is based on a discard rate of 16 percent.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and was believed to be at 24 percent of its unfished biomass. Widow rockfish was declared overfished on January 11, 2001 (66 FR 2338). The ABC (3,871 mt) is based on a F50% Fmsy proxy. The OY (832 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2039 (Tmax). The OY is reduced by 5 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.4 mt for the amount estimated to be taken in non-groundfish fisheries, and 45 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 781 mt. The commercial OY is divided with open access receiving 3 percent (23 mt) and limited entry receiving 97 percent (757 mt). The limited entry landed catch equivalent for the open access fishery is 20 mt. The limited entry allocation is reduced by 182 mt for anticipated bycatch in the at-sea whiting fishery and an additional 30 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 488 mt. Tribal vessels are estimated to land about 45 mt of widow rockfish in 2003, but do not have a specific allocation at this time.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock is believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 272 mt is based on a Fmsy proxy of F50%. The coastwide OY of 44 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to Bmsy by the year 2076 (Tmax). The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.3 mt for the amount estimated to be taken during the tribal fisheries, and 2.5 for the amount estimated to be taken in non-groundfish fisheries, resulting in a commercial OY of 23 mt. For 2003, the total catch OY has been divided with 61 percent going to the commercial fisheries and 39 percent going to the recreational fisheries. The commercial OY is divided with open access receiving 12.3 percent (2.8 mt) and limited entry receiving 87.7 percent (20 mt). The landed catch value for the open access fishery is 2.3 mt. The limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 14 mt, which is based on a discard rate of 16 percent. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.3 mt of canary rockfish in 2003, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of F50% Fmsy proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which co-occur with bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY. The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt.

o/ Bocaccio rockfish was assessed in 2002 and is believed to be at 3.6 percent of its unfished biomass. Bocaccio rockfish was declared overfished on March 3, 1999. The ABC of 198 mt is based on a F50% Fmsy proxy. The OY of ≤20 mt is based on a sustainabitiy analysis with >80 percent probability of no further decline in spawning biomass. The OY is reduced by 0.2 mt for the amount estimated to be taken during research fishing, and 5 mt for the amount estimated to be taken in the recreational

fishery, resulting in a 14 mt commercial OY. Open access is allocated 44.3 percent (6 mt) of the commercial OY and limited entry is allocated 55.7 percent (8 mt) of the commercial OY. Boccacio retention will not be permitted in 2003. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental take in fisheries for co-occurring species.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish - Following the 2000 stock assessment, yellowtail rockfish was believed to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with the Fmsy Proxy of F50%. The OY (3,146 mt) was set equal to the ABC. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, 5.8 mt for the amount taken in non-groundfish fisheries, and 400 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 2,717 mt. The open access allocation (226 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,492 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry landed catch allocation. An additional 100 mt is deducted for the shore-based whiting fishery. The remainder (2,092 mt) is further reduced by 16 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 1,773 mt. The open access landed catch equivalent is 189 mt. Tribal vessels are estimated to land about 400 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34° 27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, by 1.6 mt for compensation to vessels that conducted resource surveys, and 3.0 mt for the amount estimated to be taken in the tribal fisheries, resulting in commercial OY of 941 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (939 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value (751 mt). There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2003, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 8.9 mt for compensation to vessels that conducted resource surveys, by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,434 mt. To derive the landed catch equivalent of 2,020 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34° 27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY,(195 mt). There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to Bmsy by the year 2099 (Tmax). Cowcod retention will not be permitted in 2003. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and was believed to be at 22 percent of its unfished biomass. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The ABC is projected to be 205 mt and is based on an Fmsy proxy of F50%. The OY of 172 mt is based on the rebuilding plan, which has a 80 percent probability of rebuilding the stock to Bmsy by the year 2047 (Tmax). For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry landed catch OY. The landed catch value for the remaining limited entry fisheries is 132 mt. The landed catch values are based on a discard rate of 20 percent.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 52 mt coastwide ABC is based on an Fmsy proxy of F50%. The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50 percent probability of rebuilding to Bmsy by the year 2050 (Tmid). The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 0.6 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 3 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 9.5 mt. Tribal vessels are estimated to land about 3 mt of yelloweye rockfish in 2003, but do not have a specific allocation at this time.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,056 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish; other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 750 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,292 mt. Open access is allocated 8.3 percent (190 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,102 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2003, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC (3,556 mt) is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 493 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,401 mt. Open access is allocated 44.3 percent (621 mt) of the commercial OY and limited entry is allocated 55.7 percent (780 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish.

z/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish -- the ABC (1,115 mt) is based on a 2000 assessment, and is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards

the minor rockfish OY in the north.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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ABC Policy and Overfishing

Each fishing year, the Council evaluates the biological condition of the Pacific Coast groundfish fishery, develops estimates of the ABC for major groundfish stocks and identifies the harvest levels or OYs for the species or species groups that it proposes to manage.

The Magnuson-Stevens Act requires that the FMP prevent overfishing. Overfishing is defined in the National Standards Guidelines (50 CFR part 600, subpart D) as exceeding the fishing mortality rate (F) needed to produce maximum sustainable yield (MSY) on a continuing basis. When setting the 2003 ABCs, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (Fmsy). The OYs were then set at levels expected to prevent overfishing, equal to or less than the ABCs.

The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the biomass forecast to be available to the fishery. In 2003, the following default harvest rates proxies, based on the Council's Scientific and Statistical Committee (SSC) recommendations, were used: F40% for flatfish and F50% for rockfish (including thornyheads), and F45% for other groundfish such as sablefish, and lingcod. For whiting the Council chose a harvest rate proxy of F45% which was more conservative than the SSC's F40% recommendation. The FMP allows default harvest rate proxies to be modified as scientific data improves for a particular species.

A harvest or fishing mortality rate can mean very different things for different stocks, because the rate is dependent on the productivity of a particular species. For more resilient stocks, those with less of a decline in recruitment (a measure of the young fish that mature and enter the fishery) as the spawning stock declines, a higher fishing mortality rate may be used, such as F40%. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is therefore a more aggressive harvest rate than F45% or F50%. Harvest rate policies must account for several complicating factors, including the relative fecundity of mature individuals over time and the optimal stock size for the highest level of productivity within that stock.

For some groundfish species, there may be little or no detailed biological data available on which to base ABCs, with only rudimentary assessments being prepared. For other species, ABC levels may be established only on the basis of historical landings. Precautionary measures continue to be taken when setting ABCs and OYs for species with no or only rudimentary assessments.

In 2000, the Council adopted a more precautionary ABC policy for stocks with less rigorous or rudimentary stock assessments. The policy had been to assume that fishing mortality was equal to natural mortality (F=M); the current policy is that fishing mortality is 75 percent of natural mortality (F=0.75M). Based on SSC recommendations, the Council reaffirmed this policy, but added another precautionary adjustment, requiring that OYs for these stocks be set at 75 percent of ABCs. For further information on this policy, see the preamble to the annual specifications and management measures published on January 11, 2001 (66 FR 2338).

The 2003 ABCs are based on the best scientific information available to the Council at its September 2002 meeting. The ABCs in Table 1 represent total fishing mortality (landed catch plus discards). Where the assessments included Canadian waters, the ABCs apply only to U.S. waters. Stock assessment information considered in determining the ABCs is Stock Assessment and Fishery Evaluation documents and reports and is available from the Council. These documents were made available to the public before the Council's September 2002 meeting. Additional information may be found in the EIS prepared by the Council for this action and in documents available at the June and September 2002 Council meetings. (see **ADDRESSES**)

OY Policy

In 1999, the Council adopted a "40–10 precautionary policy" for setting OYs. The 40–10 policy is intended to reduce the chance that species will become overfished. According to the Council's OY policy, if the stock biomass is larger than the biomass needed to produce MSY (Bmsy), the OY may be set equal to or less than the ABC. The Council uses 40 percent as a default proxy for Bmsy, also referred to as B40%. The Council's default OY harvest policy reduces the fishing mortality rate when a stock is at or below Bmsy. A stock with a current biomass between 25 percent of the unfished level and Bmsy is said to be in the "precautionary zone." The further the stock is below the precautionary threshold (usually B40%), the greater the reduction in OY relative to the ABC, until at B10%, the OY would be set at zero. This is, in effect, a default rebuilding policy that will foster quicker return to the Bmsy level than would fishing at the ABC level. For further information on this policy, see the preamble to the annual specification and management measures published on January 8, 1999 (64 FR 1316).

The Council may recommend setting the OY higher than what the default OY harvest policy specifies, provided that the OY does not exceed the ABC (Fmsy)

harvest rate, complies with the requirements of the Magnuson-Stevens Act, and is consistent with the National Standard Guidelines and FMP requirements. On a case-by-case basis, additional precaution may be added as may be warranted by uncertainty in the data or by a stock's higher risk of being overfished. A stock that falls below 25 percent of its unfished biomass (B25%) is considered overfished under the FMP. Once a stock is declared overfished, the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within 1 year from the public announcement in the **Federal Register** that the stock has been declared overfished. Rebuilding plans for overfished species generally have stock-specific allowable harvest rates based on a rebuilding analysis and rebuilding strategy, although those rates may still be consistent with this 40–10 default OY policy and may not exceed Fmsy.

2003 ABCs and OYs

The species that had ABCs and OYs in 2002 continue to have ABCs and OYs in 2003. Changes that have been made since 2002 that affect the ABCs and OYs for 2003 include: (1) the completion of new assessments for canary, bocaccio, and yelloweye rockfish; (2) the preparation of an assessment update for sablefish; (3) the preparation of a yelloweye rockfish rebuilding analysis; (4) revision of the widow rockfish rebuilding analysis; (5) changes in the catch distribution of canary rockfish between commercial and recreational fisheries; (6) the preparation of a sustainability analysis for bocaccio rockfish; (7) the projection of the 2002 Pacific whiting model forward one year; and (8) the subdivision of the minor nearshore rockfish south OY into shallow nearshore rockfish, California scorpion fish, and deeper nearshore rockfish. Discussions of the development of ABCs and OYs for species with changed specifications from 2002 are contained in this section. Summaries of draft rebuilding plans for overfished species are provided in the next section, ''Determination of Overfished Stocks and Rebuilding Plans.''

Canary rockfish

NMFS prepared an assessment update for canary rockfish, based on an age-structure stock synthesis model. Unlike the previous assessment in 2000, the 2002 assessment model included the entire coast and blended the alternative mortality/selectivity scenarios into one scenario that linked increasing female natural mortality to maturity while allowing selectivity (the ability of the gear to catch certain sizes or types of fish) of females to be domed shaped. In this context, ''domed shaped'' means that the model places greater emphasis on female mortality at intermediate ages, rather than equally across all possible ages of mortality. This was done to address uncertainty regarding the reasons for the lower occurrence of old females versus old males. Although the model provides a more complete evaluation, the availability and mortality of older females in the survey and fishery data continues to be a source of uncertainty with the assessment. The 2002 assessment extends back to 1940 to provide a better evaluation of the unfished biomass level, and estimates the degree of compensation in the spawner-recruitment relationship to provide an improved basis for forecasting future recruitments during rebuilding.

The new assessment estimates that the canary rockfish biomass was at 8 percent of its unfished biomass coastwide at the beginning of 2002. As with the 2000 assessment, canary rockfish shows a decline throughout the assessment time period with most of the decline occurring from 1975 to 1995.

The Council considered four OYs based on different rebuilding parameters—constant fishing mortality rates that would have 80–percent, 60–percent and 50–percent probabilities of rebuilding the canary rockfish to Bmsy by the year 2076 (T_{max} is the maximum allowable time to rebuild as defined in the National Standard Guidelines, 50 CFR subpart D). The fourth option had a 50–percent probability of rebuilding the canary rockfish to B40% by the year 2067 (T_{mid}). (T_{mid} is halfway between T_{max} and T_{min}–the minimum time to rebuild in the absence of fishing as defined in the National Standard Guidelines, 50 CFR Subpart D). In addition, four different arrangements for dividing catch between the commercial and recreational fisheries were considered. The OY levels ranged from 20 mt to 57 mt. In general, the recreational fisheries take smaller canary rockfish than the commercial fisheries, resulting in a greater per ton impact on the canary stock over the rebuilding period. The catch sharing arrangements considered by the Council included: 20 percent recreational/80 percent commercial, 39 percent recreational/61 percent commercial, 50 percent recreational/50 percent commercial, and 80–percent recreation/ 20 percent commercial. The Council recommended adopting an ABC of 272 mt and an OY of 44 mt based on a 60–percent probability of rebuilding the canary rockfish to Bmsy by the year 2076 (T_{max}) with a 39–percent recreation/61–percent commercial catch sharing arrangement. Canary rockfish is taken in a wide variety of fisheries coastwide, co-occurring with many different groundfish stocks. The catch sharing arrangement for canary rockfish was needed to ensure that canary rockfish taken in the different fisheries would be appropriately accounted for.

Bocaccio Rockfish

A new stock assessment was prepared for bocaccio rockfish in the Conception and Monterey areas, the statistical areas where the bocaccio rockfish stock is overfished. This new assessment uses a length-based stock synthesis model similar to that used for the 1999 assessment, but differs from the previous assessment in that it (1) includes new information from a larger area of southern California; (2) moves the beginning of the assessment time period back 18 years; (3) updates estimates of commercial and recreational landings data; (4) uses a ''jacknife'' statistical method to estimate precision of abundance indexes rather than using assumed values of precision, which is a useful procedure when the data dispersion or distribution are wide or extreme; (5) omits triennial survey data from hauls where the trawl gear did not actually fish on the ocean floor (so-called ''water hauls''); (6) adds an index of larval abundance reflecting spawning biomass; (7) adds a recreational ''catch per unit effort''(CPUE)index for 1980–2001; and (8) includes a new recruitment index based on the impingement rate of juvenile bocaccio rockfish in saltwater intakes at southern California electric power plants between 1972–2000.

The new bocaccio rockfish assessment is consistent with the finding in previous assessments that there has been a declining biomass trend since 1969. The new assessment estimates that the bocaccio rockfish spawning stock biomass in the Monterey and Conception areas is at about 3.6 percent of its unfished biomass. The estimated biomass for 2002 (age 2+ fish) is 2,914 mt. The ABC for bocaccio rockfish, which is based on the new assessment with an Fmsy proxy of F50%, is 198 mt.

Bocaccio was declared overfished in 1999. Since 2000, the bocaccio OY has been set to be a constant harvest level of 100 mt. This level was based on the 1999 rebuilding analysis and was estimated to have a 67 percent probability of rebuilding the stock to Bmsy by 2033. The new assessment in 2002 found that the rate of rebuilding would probably be lower than projected from the 1999 assessment and that the

harvest level would need to be lowered. Based on the new stock assessment and a new rebuilding analysis, the Council, at its June 2002 meeting, recommended for further analysis a bocaccio rockfish OY for 2003 of 5.8 mt. This new OY was associated with a constant mortality rate and a 50 percent probability of rebuilding to Bmsy by the year 2109 (T_{max}). At this same meeting, the Council requested that the rebuilding analysis be updated using procedures recommended by the SSC. Following the June 2002 Council meeting and prior to revision of the bocaccio rebuilding analysis, the rebuilding model for all overfished species was refined to more accurately account for actual catch occurring during and after the initial year of rebuilding.

In the revised bocaccio rebuilding analysis prepared following the June Council meeting, the stock failed to have a 50- percent probability of rebuilding by T_{max}, even in the absence of fishing. T_{max} is the maximum time for rebuilding established by the National Standard Guidelines (50 CFR 600, subpart D). This failure is due to lower estimated recruitment of the 1999 year class and recent landings that exceeded the rebuilding OYs. Bocaccio landings in 2000 and 2001 were respectively 69 and 47 mt over the OY levels set in 2000. In addition, hindsight shows, based on the new rebuilding analysis' calculation of the actual strength of the 1999 year class, that the OYs for 2000 and 2001 had been set too high in view of the actual strength of the 1999 year class. The OYs set for 2000 and 2001 created a ''rebuilding deficit'' that will take more than T_{max} to recover from. NMFS subsequently prepared a sustainability analysis for bocaccio rockfish. A rebuilding analysis addresses the fishing rates associated with rebuilding an overfished stock to a target abundance within a specified time frame, whereas a sustainability analysis addresses the fishing rates that would lead to no further decline in abundance over a specified time frame. In both types of analysis, the uncertainty of future reproductive successes requires that the results be described in terms of probabilities rather than certainties. The sustainability analysis shows that a harvest level of ≤20 mt would provide a 50- percent probability for the stock to rebuild in 170 years, with a high probability (>80 percent) of no further decline in the spawning biomass over the next 100 years. The Council's SSC concluded that the sustainability analysis represented the best available science and endorsed its use in setting 2003 harvest levels. The Council agreed with the SSC recommendation. The National Standard Guidelines do not address the situation where NMFS concludes, based on an updated rebuilding analysis, that a stock cannot be rebuilt within T_{max}, even with zero fishing mortality. Therefore, NMFS has determined that the National Standard Guidelines do not provide sufficient guidance for the bocaccio rockfish situation and instead has looked directly to the Magnuson-Stevens Act for guidance. Section 304(e)(4)(A)(i) states that a rebuilding period shall ''be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem.''

NMFS believes that the Magnuson-Stevens Act requires that the Council and NMFS meet the conservation needs of the stock (National Standard 1), and also consider the needs of fishing communities (National Standard 8). Balancing these considerations, zero fishing mortality is not required for this situation. Zero fishing mortality would seriously adversely affect fishers and communities in California south of Cape Mendocino, CA. In this area, commercial fisheries (including fisheries for non-groundfish species) and recreational fisheries that incidentally catch bocaccio would be severely curtailed or closed for many years into the future. Bocaccio is taken incidentally in a wide variety of fisheries, ranging from recreational fisheries that operate off piers and jetties taking juvenile bocaccio in nearshore waters, to commercial purse seine fisheries for squid and other coastal pelagic species.The OY recommended by the Council, which is based on the sustainability analysis, the needs of fishing communities, and the biology of the stock, has a low probability of driving the stock into further decline and will not materially jeopardize future rebuilding. The large historical biomass of bocaccio occurred through accumulation over time of biomass from several intermittent, large recruitments. These large recruitment events are thought to be connected to currently unknown and unpredictable ocean conditions. Bocaccio rebuilding depends on the future occurrence of similarly large recruitment successes. Although the 1999 year class was in fact smaller than had been projected in 1999, it is still the largest year class since 1991. The recruitment success observed in 1999 indicates that the current spawning biomass is capable of initiating the rebuilding, but substantial rebuilding awaits the future occurrence of several such successes. Based on the current information, NMFS concludes that at the proposed OY level bocaccio will be able to rebuild. The analysis shows an 80 percent probability of no further decline after 100 years, a 50 percent probability (the standard reference probability level) of rebuilding within 170 years, and a 33 percent probability of rebuilding by the year 2109. Therefore, NMFS believes the recommended OY is consistent with the Magnuson-Stevens Act.

Yelloweye Rockfish

Yelloweye rockfish were first assessed in 1996 as part of the ''remaining rockfish'' group. In 2001, a yelloweye rockfish assessment was conducted for northern California and Oregon. The 2001 assessment estimated that yelloweye rockfish was at about 7 percent of its unfished biomass in waters off northern California and at 13 percent of its unfished biomass in waters off Oregon; this resulted in NMFS declaring yelloweye rockfish to be overfished. An initial yelloweye rockfish rebuilding analysis, based on the 2001 assessment, was prepared and presented at the Council's June 2002 meeting. Because this assessment did not cover Washington, the development of rebuilding measures was hampered.

In August 2002, an updated assessment was completed in order to incorporate data from Washington, an important area of yelloweye rockfish abundance, and to incorporate newly available age data. Other changes from the 2001 assessment included: the use of a combined area model; revised selectivity curves for all sectors of the fishery; the inclusion of Washington catch data; re-evaluation of California logbook data and the influence of port group and depth effects; extension of the modeled time period; revision of the treatment of natural mortality rates; and inclusion of a spawner-recruitment relationship to provide an overall measure of stock productivity.

Like the 2001 assessment, the updated assessment indicated that there has been a declining abundance trend for more than 30 years, with the last above average recruitment occurring in the late 1980s. The assessment update concluded that the coastwide yelloweye rockfish spawning female biomass (934 mt) was at 24.1 percent of its unfished biomass at the beginning of 2002. The SSC supported the new assessment model and indicated that it represented the best available science. The 2003

yelloweye ABC of 52 mt is based on the new assessment, with an Fmsy proxy of F50%.

A revised rebuilding analysis was prepared following completion of the 2002 assessment. Due to the less depleted stock status and higher productivity estimated by the updated assessment, the rebuilding period is shorter than had been estimated following the initial rebuilding analysis. The SSC indicated that the revised rebuilding analysis represented the best available science and advised using it to set 2003 harvest levels.

At the Council's September meeting, four OY options were considered for yelloweye rockfish: 2.1 mt — the low range from the June 2002 draft rebuilding analysis; 13.5 mt - the 2002 OY; 22 mt - based on a 50–percent probability of rebuilding the yelloweye rockfish to Bmsy by the year 2050 (T_{mid}) from the revised rebuilding analysis; and 27 mt, the value corresponding to a 50–percent probability of rebuilding the yelloweye rockfish to Bmsy by the year 2069 (T_{max}) from the revised rebuilding analysis. The SSC advised that the OY not exceed 22 mts, the OY recommended by the Council's ad hoc allocation committee. The Council followed the SSC's advice and recommended adopting an OY of 22 mt.

Sablefish

In 2001, sablefish were assessed in the region between Point Conception (34° 27′ N. lat.) and the U.S.-Canada border. The assessment indicated a decline in biomass since the late 1970s and a decline in recruitment during the early 1990s. This result was supported by a parallel assessment conducted by an industry-supported research team. For 2002, newly available fishery and survey data were used to update the assessment. No changes were made to the model structure or assumptions. However, the update produced a larger than expected increase in the perceived stock abundance throughout the time series. Such a change is an indication of the overall uncertainty in the stock assessment due to the relatively short time series of survey data. The relative 2001 spawning stock biomass had been estimated to be between 27 and 38 percent of the unfished biomass following the 2001 assessment, and the estimate increased to between 31 and 39 percent of the unfished biomass in the 2002 update. There was a notable increase in the estimated abundance of young fish born in 1999 and 2000 and evidence that these young fish have begun to recruit to the fishery.

As in 2001, two alternative states of nature, environmentally driven and density-dependent, were considered in calculation of target abundance levels and current productivity. The declines in recruitment during the early 1990s may have resulted from changes in environmental conditions or the low recruitment may have been caused by low spawning biomass. It is not possible to determine with high confidence the primary cause of the low recruitments during the 1990s, but the higher recruitment in 1999 and 2000 lends support for the environmental scenario.

The ABC estimate for the assessment area north of Point Conception (34° 27′ N. lat) is 8,459 mt. The ABC for the management area north of 36° N lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The ABC estimate was based on the environmental scenario for trends in recruitment and on application of an Fmsy proxy of F45%. Although there is evidence that juvenile sablefish have begun to recruit to the fishery, the growth of the sablefish biomass will be slow and will depend on future average recruitment being larger than observed during most of the 1990s.

Four OY options were presented to the Council for the area North of 36° N. lat.: 8,187 mt based on the ABC from the environmentally driven projection with an Fmsy proxy of F45% and a 40/10 adjustment; 7,455 mt based on the ABC from the density-dependent projection with an Fmsy proxy of F45% and a 40/10 adjustment; 4,477 mt based on the ABC from the density-dependent projection with an Fmsy proxy of F60% and a 40/10 adjustment; and 5,000 mt, an intermediate point between 4,477 mt and 7,455 mt. The SSC indicated that the medium and high OYs were relatively risk-prone and advised the Council that caution should be used when setting the 2003 harvest levels. The SSC noted that an OY of 5,000 mt, as recommended by the Council's ad hoc Allocation Committee, was consistent with the SSC recommendation and addresses uncertainty in assessment relating to the different states of nature.

Following discussions and public comment, the Council recommended adopting an ABC of 8,459 mt for the surveyed area, resulting in an ABC of 8,209 mt with an OY of 6,500 mt for the area north of 36° N′ lat. The Council recommended OY of 6,500 mt is the 7,455 mt OY, based on a 40/10 adjustment to the ABC, with an additional 1,000 mt precautionary reduction. The Council based its recommendation on the SSC's advice to be precautionary because of assessment uncertainties, and because the sablefish biomass is within the precautionary range. The Council indicated that it was prudent to adopt an OY that was risk averse rather than risk neutral.

Pacific Whiting

Pacific whiting was declared overfished on April 15, 2002 (67 FR 18117). The Pacific whiting stock is estimated to be just below the FMP's overfished species rebuilding threshhold of B25%. In June, a draft rebuilding analysis for whiting that followed the analysis guidelines established by the SSC was presented to the Council. Because of the high variability in recruitment patterns and short life span of whiting, the rebuilding analysis estimated a short rebuilding period even with high harvest levels. However, given the recruitment variability, there is also a high probability that the whiting biomass would drop below the overfishing threshold again following recovery. The rebuilding analysis examined alternative Fmsy proxies in terms of whether the population would become overfished following recovery. The SSC was unable to investigate the merits of moving from the current F40% Fmsy proxy to another; however, the SSC did advise continuing the use of the 40–10 harvest policy for whiting and noted that the 40–10 harvest policy appeared adequate to achieve rebuilding.

Three OY options, all of which are based on a medium level of recruitment for the 1999 year class, were considered by the Council: 129,600 mt based on the 2002 biomass estimate with an F40% Fmsy proxy and the application of the 40–10 harvest policy; 148,200 mt based on the 2003 projected biomass with an F45% Fmsy proxy and the application of the 40–10 harvest policy; and 173,600 mt based on the 2003 projected biomass with an F40% Fmsy proxy and the application of the 40–10 harvest policy. The SSC advised the Council to be precautionary and not increase the whiting OY over the 2002 harvest level until a new assessment was conducted. However, the Council indicated that the medium harvest level, 148,200 mt, based on the 2003 projected biomass with an F45% Fmsy, was sufficiently precautionary. Although it allows a short-term increase in the OY based on expected population growth, it moves to a more precautionary harvest rate that is expected to increase the rebuilding rate and reduce the risk of declining back into an overfished state (below B25%) given the high productivity of whiting.

Minor Nearshore Rockfish

To protect depleted stocks and minimize the chance of overfishing, changes were made in 2000 that

eliminated the ''Sebastes complex'' and created the ''minor rockfish'' categories (January 4, 2000, 65 FR 221). Minor rockfish species that have had rudimentary or no assessments are divided into nearshore, shelf, and slope categories that represent where they are predominantly caught.

Given the expected increase in fishing pressure in nearshore areas, the States of Oregon and California indicated that the commercial and recreational minor nearshore rockfish fisheries could be better managed if the minor nearshore rockfish species group were subdivided. For 2003, the States of Oregon and California will manage minor nearshore rockfish north as two groups: black and blue rockfish and all other nearshore rockfish. Due to the expected effort shift to the nearshore area resulting from depth based closures in deeper waters, the Council further recommended capping the 2003 OY at the 2000 OY level. This was done as a precautionary measure until quantitative assessment can be prepared for the southern portion (south of Cape Falcon, OR) of the area north of Cape Mendocino, CA. Because there are no commercial nearshore fisheries in the State of Washington, minor nearshore rockfish will continue to be managed as a single group. The total catch OY for black and blue rockfish in the area between 40°10′ N. lat. and 46°16′ N. lat. is 585 mt and the total catch OY for all other nearshore rockfish in this same area is 53 mt. For the area north of 46°16′ N. lat. (the Washington/Oregon border), the total catch OY for all nearshore rockfish is 290 mt, most of which is estimated to be taken in the recreational fisheries although a small amount is expected to be taken in the tribal fisheries.

For 2003, the minor nearshore rockfish south OY will be managed as the following three groups with separate OYs: Shallow nearshore rockfish (black and yellow, China, grass, gopher and kelp rockfish), California scorpionfish, and deeper nearshore rockfish (black, blue, brown, calico, copper, olive, treefish, and quillback rockfish). Given the projected increase in both recreational and commercial fishing pressure in nearshore areas, the State of California indicated that the fisheries could be better managed and overfishing prevented if the minor nearshore rockfish species were subdivided. The shallow nearshore rockfish total catch OY will be 104.9 mt; the deeper nearshore rockfish total catch OY will be 351 mt; and the California scorpionfish total catch OY will be 84.8 mt. Alternative catch sharing arrangements between the commercial and recreational sectors were considered by the Council. The catch sharing arrangement proposal in this rule was developed through a public hearing process conducted by the California Department of Fish and Game.

Overfished Species

Nine groundfish stocks have been designated as ''overfished,'' POP, bocaccio, lingcod, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, yelloweye rockfish and Pacific whiting. Management measures designed to rebuild overfished species, or to prevent species from becoming overfished, may restrict the harvest of relatively healthy stocks that are harvested with overfished species. As a result of the constraining management measures imposed to protect and rebuild overfished species, a number of the OYs for healthy stocks may not be achieved in 2003.

Pacific Ocean Perch (POP)

The recommended ABC for POP in 2003 is 689 mt, is based on an F50% Fmsy proxy and is a 2003 projection based on the Council's interim rebuilding strategy. Three OYs based on the most recent rebuilding analysis and corresponding to different probabilities of rebuilding the stock were presented to the Council. These OYs were: 496 mt based on a 50 percent probability of rebuilding POP rockfish to Bmsy by the year 2041 (T_{max}); 377 mt the value corresponding to a 70 percent probability of rebuilding POP to Bmsy by the year 2041; and 311 mt the value corresponding to an 80–percent probability of rebuilding POP to Bmsy by the year 2041. The Council recommended OY of 377 mt is consistent with the interim rebuilding strategy adopted by the Council in prior years.

Lingcod

The recommended ABC for lingcod in 2003 is 841 mt and is based on an F45% Fmsy proxy. Three OYs, based on the rebuilding analysis prepared in 2001 and corresponding to different probabilities of rebuilding the stock to Bmsy by T_{max}, were presented to the Council. These OYs were: 555 mt based on a 80- percent probability of rebuilding lingcod to Bmsy by the year 2009 (T_{max}); 651 mt the value corresponding to a 60–percent probability of rebuilding lingcod to Bmsy by the year 2009; and 725 mt the value corresponding to a 50–percent probability of rebuilding lingcod to Bmsy by the year 2009. The Council recommended adopting an OY for 2003 of 651 mt. This harvest level is consistent with the interim rebuilding strategy adopted by the Council in prior years and is expected to maintain the Council's goal of rebuilding lingcod by the year 2009.

Darkblotched Rockfish

The recommended ABC for darkblotched rockfish in 2003 is 205 mt and is based on an F50% Fmsy proxy. Five OYs, based on the 2001 rebuilding analysis and corresponding to different probabilities of rebuilding the stock to Bmsy, were presented to the Council. These OYs were: 100 mt, 130 mt based on the 2001 harvest level that was in place before the final rebuilding analysis was completed, 172 mt the value corresponding to a 80- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047 (T_{max}); 184 mt the value corresponding to a 60- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047; and 205 mt the value corresponding to a 50- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047. The 172 mt OY is also comparable to a 50- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2030 (T_{mid}).

Because darkblotched rockfish are primarily harvested with trawl gear, managing to a lower OY would most constrain the trawl fishery and likely require most fishing to occur seaward of the 250 fm (457 m) depth contour, where darkblotched rockfish is primarily caught (for further information see the Emergency rule to establish depth-based management measures; September 13, 2002, 67 FR 57973). Measures to further restrict flatfish trawl fisheries shoreward of 100 fm (183 m) would also protect juvenile darkblotched rockfish. Small vessels would be most affected by a lower OY. The Council recommended an OY of 172 mt, which provides a reasonable balance between the length of time for rebuilding the stock and the adverse economic impacts to the limited entry trawl sector. This OY is associated with an 80- percent probability of rebuilding within T_{max} as compared to the 70 percent probability that was applied in 2002.

Widow Rockfish

The recommended ABC for widow rockfish in 2003 is 3,871 mt and is based on an F50% Fmsy proxy. At the Council's June 2002 meeting, a revised widow rockfish rebuilding analysis was reviewed. Three OYs based on the revised analysis and corresponding to different probabilities of rebuilding the stock by T_{max} were presented to the

Council. These OYs were: 656 mt based on a 50 percent probability of rebuilding widow rockfish to Bmsy by the year 2030 (T_{mid}); 832 mt the value corresponding to a 60 percent probability of rebuilding widow rockfish to Bmsy by the year 2039 (T_{max}); and 916 mt the value corresponding to a 50- percent probability of rebuilding widow rockfish to Bmsy by the year 2039. The low OY alternative would not provide for a mid-water trawl target fishery for yellowtail rockfish and would not provide an adequate buffer against unanticipated mortalities and increased effort. The higher harvest levels could be expected to provide for a limited mid-water trawl fishery for yellowtail rockfish. The Council recommended adopting an OY for 2003 of 832 mt. This harvest level is consistent with the interim rebuilding strategy adopted by the Council, and a 60–percent probability of rebuilding widow rockfish to Bmsy by the year 2039, which is the same as a 50 percent probability of rebuilding by 2037 (T_{Target}.)Derivations of the ABC and OYs for the individual groundfish species are explained in detail in Council documents from their June and September 2002 meetings and in the most recent stock assessments and are summarized in this document in Table 1a. Derivations of commercial harvest guidelines, limited entry and open access allocations, and landed catch equivalents appear in the footnotes to Table 1a, listed at the end of Table 1b.

Determinations of Overfished Stocks and Rebuilding Plans

The status of the groundfish stocks is evaluated against the requirements of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP. A species is considered to be overfished if its current biomass is less than 25 percent of the unfished biomass. The Magnuson-Stevens Act requires that a rebuilding plan be prepared within 1 year after the Council is notified by NMFS that a particular species is overfished.

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, boccacio, and POP (65 FR 53646, September 5, 2000). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which were submitted for public review (65 FR 54475, September 8, 2000) and approved by NMFS on December 7, 2000. During NMFS's review of Amendment 12, the agency considered whether the three recently approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (65 FR 82947, December 29, 2000). NMFS instructed the Council to re-submit rebuilding plans. The groundfish fishery has continued to operate under interim rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that the Council must submit rebuilding plans for these species to NMFS by January 4, 2001 (65 FR 221, January 4, 2000). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species to NMFS by January 11, 2002. Subsequently, on August 20, 2001, the Federal magistrate ruled in *National Resources Defense Council, Inc* v. *Evans* 168 F. Supp. 2d 1149 (N.D. Cal., 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 to the FMP dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council must now revise Amendment 12 and rebuilding plans to be consistent with the Magnuson-Stevens Act. On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan to NMFS by January 11, 2003. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan to NMFS by April 15, 2003. At its October 29 - November 1, 2002, meeting in Foster City, CA, the Council addressed Amendment 16 to the FMP, which is scheduled for adoption in April 2003. Amendment 16 is intended to bring the FMP into compliance with the Court order to make rebuilding measures consistent with the Magnuson-Steven's Act, and allow for public review.

The draft rebuilding plans initially endorsed by the Council are summarized as follows:

POP

Areas: Vancouver and Columbia
Status of stock: 13 percent of its unfished biomass (1998)
T_{max}: 2041
Ttarget with a 50 percent probability of rebuilding: 2027
Probability of rebuilding to Bmsy by T_{max}: 70 percent
Fmsy proxy: F50%
ABC in 2003: 689 mt
OY in 2003: 377 mt
Management measures for 2003: POP primarily inhabit waters of the upper continental slope and are found along the edge of the shelf. POP are primarily taken in trawl gear. Therefore, new depth based management measures that prohibit bottom trawling in depths where darkblotched rockfish, a slope species, are commonly found will also benefit POP. Relatively small cumulative trip limits are intended to accommodate incidental bycatch without encouraging targeting. POP is not an important species for the recreational or nontrawl commercial fisheries.

Bocaccio

Areas: Monterey and Conception
Status of stock: 3.6 percent of its unfished biomass in 2002
T_{max}: 2109 see discussion in previous section regarding the sustainability analysis
T_{target} with a 50 percent probability of rebuilding: see discussion in previous section regarding the sustainability analysis
Probability of rebuilding to Bmsy by T_{max}: see discussion in previous section regarding the sustainability analysis
Fmsy proxy: F50%
ABC in 2003: 198 mt
OY in 2003: $\leq$20 mt
Management measures for 2003: All directed bocaccio rockfish fishing opportunities will be eliminated for 2003. Boccacio rockfish retention will not be permitted in the commercial fisheries. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental catch taken in fisheries for co-occurring species (see bycatch rate discussion). Bocaccio rockfish are a shelf species commonly found in depths between 45–160 fm (82–293 m). New depth based management measures will prohibit groundfish-directed bottom trawl, limited entry fixed gear, and open access fishing opportunities in the depths where bocaccio are most commonly found. Closed areas will differ by gear type to tailor closures so that they best reflect where a particular gear type takes bocaccio. Chilipepper rockfish will be included in the minor

shelf species group, which eliminates opportunities to directly target a species that commonly co-occurs with bocaccio. The California recreational fisheries south of 40° 10′ N. lat. will be closed entirely from January through June, 2003 and open only shoreward of 20 fm (37 m) for July through December. The retention of bocaccio rockfish will be prohibited for all gears.

Lingcod

Areas: Coastwide

Status of stock: 15 percent of its unfished biomass in 2001

T_{max}: 2009

T_{mid} with a 50–percent probability of rebuilding: NA

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F45%

ABC in 2003: 841 mt

OY in 2003: 651 mt

Management measures for 2003: In general, commercial non-trawl landings are prohibited during winter months to protect lingcod during their spawning and nesting seasons. Trip limits during the open season remain low. Because lingcod are predominately found on the shelf, gear and depth based management restrictions imposed to protect overfished shelf rockfish species will benefit lingcod. The recreational fisheries in each State maintained a 2 lingcod bag limit, however Washington State will close lingcod fishing for five months, from fall to early spring. California recreational fisheries will be closed from January to June. Commercial hook and line fisheries are similarly closed during the winter months to eliminate targeting during the winter spawning and nesting season.

Canary Rockfish

Areas: Coastwide

Status of stock: 8 percent of its unfished biomass in 2002

T_{max}: 2076

T_{target} with a 50 percent probability of rebuilding: 2074

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F50%

ABC in 2003: 272 mt

OY in 2003: 44 mt

Management measures for 2003: The new depth based management measures that prohibit bottom trawling on much of the continental shelf and slope will limit opportunity to catch canary rockfish. In addition, small footrope trawl gear restrictions in waters shoreward of the closed areas are expected to keep the incidental catch of canary rockfish low. May to October restrictions for arrowtooth flounder are also expected to minimize incidental catch of canary rockfish. Retention of canary rockfish will be prohibited in the limited entry and open access fixed gear fisheries. The States will require the exempted pink shrimp trawl vessels to use finfish excluders to participate in the state-managed fisheries. The States of Washington and California will ban spot prawn trawls beginning in 2003, and instead require pot gear to be used for spot prawns. In the recreational fisheries canary rockfish retention will be limited to 1 fish in Washington and Oregon, and prohibited in California. In addition, the California recreational fisheries south of 40° 10′ N. lat. will be closed entirely from January through June and open only shoreward of 20 fm (37 m) for July through December.

Cowcod

Areas: Point Conception to the U.S.-Mexico boundary.

Status of stock: 4–11 percent of unfished biomass in 1999

T_{max}: 2099

T_{target} with a 50–percent probability of rebuilding: 2095

Probability of rebuilding to Bmsy by T_{max}: 55 percent

Fmsy proxy: F50%

ABC in 2003: 24 mt

OY in 2003: 4.8 mt

Management measures for 2003: All directed cowcod fishing opportunities were eliminated beginning in 2001. Retention of cowcod is prohibited for all commercial and recreational fisheries. To protect cowcod from incidental harvest, the Council has recommended continuing to use two Cowcod Conservation Areas (CCAs) (the Eastern CCA and the Western CCA) in the Southern California Bight, delineated to encompass key cowcod habitat areas and known areas of high catches. Fishing for groundfish is prohibited within the CCAs, except that minor nearshore rockfish, cabezon, lingcod, scorpionfish, and greenling may be taken from waters where the bottom depth is less than 20 fathoms (37 m) when the season for those species is open. A transportation corridor is provided through the Western CCA to allow commercial vessels fishing for slope rockfish and other groundfish west of the Western CCA to transport that groundfish through the Western CCA.

Darkblotched rockfish

Areas: Coastwide

Status of stock: 22 percent of unfished biomass in 2000

T_{max}: 2047

T_{target} with a 50 percent-probability of rebuilding: 2030

Probability of rebuilding to Bmsy by T_{max}: 80%

Fmsy proxy: F50%

ABC in 2003: 205 mt

OY in 2003: 172 mt

Management measures for 2003: Adult darkblotched rockfish primarily inhabit waters of the upper continental slope and are primarily found along the edge of the shelf north of 38° N.′ lat. Darkblotched rockfish are primarily taken with trawl gear. The new depth based management measures that prohibit bottom trawling on much of the continental shelf and slope will limit opportunity to catch darkblotched rockfish. Measures to restrict flatfish trawl fisheries shoreward of 100 fm (183 m) will also protect juvenile darkblotched rockfish. May to October restrictions for arrowtooth flounder are also expected to minimize incidental catch of darkblotched rockfish.

Widow Rockfish

Areas: Coastwide

Status of stock: 24 percent of unfished biomass in 2000

T_{max}: 2039

T_{target} with a 50–percent probability of rebuilding: 2037

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F50 percent

ABC in 2003: 3,871 mt

OY in 2003: 832 mt

Management measures in 2003: Commercial limits for widow rockfish are intended to accommodate incidental catch and remove incentives for direct fishing. In addition, the midwater trawl fisheries for yellowtail rockfish have been constrained with an incidental catch allowance during the primary season for Pacific whiting to reduce interception of widow rockfish. Bottom trawl opportunities for shelf rockfish continue to be extremely limited, which is expected to benefit widow rockfish.

Yelloweye Rockfish

Areas: coastwide

Status of stock: 24 percent of unfished biomass in 2002

T_{max}: 2071

T_{target} with a 50–percent probability of rebuilding: 2052

Probability of rebuilding to Bmsy by T_{max}: 92 percent

Fmsy proxy: F50%

ABC in 2003: 52 mt

OY in 2003: 22 mt

Management measures in 2003: Yelloweye rockfish are more available to the fixed gear and recreational fisheries than to trawl gear. The retention of yelloweye rockfish in the commercial fixed gear fisheries will be prohibited. In addition, depth based closures on the continental shelf will prevent commercial interception of yelloweye rockfish. Off Washington State retention of yelloweye rockfish in recreational fisheries will be prohibited. A Yelloweye Rockfish Conservation Area

(YRCA) has been identified off the north Washington coast, and recreational fishing will be prohibited within that conservation area. In Oregon, the retention of yelloweye rockfish during the all-depth halibut fisheries will be prohibited, otherwise there is a one yelloweye rockfish sub-limit in the ten marine fish bag limit. The California recreational fisheries south of 40° 10′ N lat will be closed entirely from January through June and open shoreward of 20 fm (37 m) for July through December. However, the retention of yelloweye rockfish in the California recreational fisheries will be prohibited.

Overfishing

None of the 2003 ABCs are knowingly set higher than Fmsy or its proxy, none of the OYs are set higher than the corresponding ABCs, and the management measures in this proposed rule are designed to keep harvest levels within specified OYs. Overfishing is difficult to detect inseason for many groundfish, particularly for minor rockfish species, because most are not individually identified on landing. Species compositions, based on proportions encountered in samples of landings, are applied during the year. However, final results are not available until after the end of the year. Thus, this **Federal Register** document discusses overfishing for 2001, not 2002. If overfishing occurred on any groundfish species in 2002, it will be discussed in the 2004 **Federal Register** publication of the specifications for that year. After the 2001 fishing season, NMFS determined that overfishing had not occurred on any of the groundfish species. However, a new stock assessment on Pacific whiting incorporating 2001 hydroacoustic survey data was completed in early 2002. The new stock assessment revised the spawning stock biomass to be lower than previously estimated over the past several years. Therefore, in retrospect, revised biomass estimates based on the results of the new assessment indicate that the exploitation rates on Pacific whiting in 1999, 2000, and 2001 were above the overfishing level.

In the past, several changes to groundfish management, and rockfish management in particular, were intended to ensure that groundfish species were not subject to overfishing harvest rates. These changes included separating the rockfish complex into species and assemblages (nearshore, shelf, and slope), closing fisheries inseason once the OY has been reached, structuring the season to reduce bycatch of overfished species, imposing gear restrictions, requiring sorting of rockfish to improve landings data, and restructuring the season and trip limits inseason. As information on the stocks improves, management measures continue to evolve. For 2003, management measures are more restrictive in order to protect overfished species, including reduced harvest levels, depth based management, closed areas and seasons. Area closures north of Cape Mendocino, CA, were primarily designed to protect canary rockfish, but are also expected to provide protection for other northern overfished species such as darkblotched rockfish, lingcod, POP, yelloweye rockfish, and widow rockfish. Area closures south of Cape Mendocino, CA were primarily designed to protect bocaccio rockfish, but are also expected to provide protection for other southern overfished species such as cowcod, lingcod, and darkblotched rockfish in its southern range.

Bycatch and Discard Accounting

The Magnuson-Stevens Act defines bycatch as ‘‘fish which are harvested in a fishery, which are not sold or kept for personal use, and include economic discards and regulatory discards.’’ By contrast, Pacific Coast groundfish fishery management and many other fishery management regimes commonly use the term bycatch to describe non-targeted species that are caught in common with (co-occur with) target species, some of which are landed and sold or otherwise used and some of which are discarded. The term ‘‘discard’’ is used to describe those fish harvested that are neither landed nor used. For the purposes of this proposed rule, the term ‘‘bycatch’’ is used to describe a species’ co-occurrence with a target species, regardless of that first species’ disposition.

West Coast groundfish species are rarely found in isolation. They normally form associations with other groundfish species that vary by geographic location, position in the water column, and season. Fisheries management recognizes this mix by setting management measures that discourage targeting of more abundant stocks in times when and areas where depleted stocks may co-occur with those healthy stocks. Fisheries management also recognizes this mix by structuring retention allowances for the harvestable amounts of depleted stocks so that fisheries have some limited opportunity to access more abundant fish stocks.

With the exception of the mid-water trawl fishery for Pacific whiting, most groundfish vessels sort their catch at sea and discard species that are either in excess of cumulative trip limits, unmarketable, in excess of annual allocations, or incidentally caught non-groundfish species. Landed or retained catch has been monitored by the three state-run fish ticket programs in Washington, Oregon, and California. Since August 2001, total catch (landed catch + discards) has been monitored through a Federal observer program. (For more information on the NMFS observer program and the observer coverage plan, see *http://wwwnwfsc.noaa.gov/fram/Observer*.) Widow, yellowtail, canary and darkblotched rockfish discard in the at-sea whiting fisheries is monitored inseason and actual discard numbers are deducted from the OY.

Groundfish management measures include provisions to reduce trip limit-induced discards and to account for those discards when monitoring harvest levels OYs. Historically, NMFS and the Council have accounted for dead discards by estimating the amounts of certain species OYs that would be discarded dead, and then subtracting those amounts from the total catch OYs to get landed catch levels for those species. These discard rates have been expressed as a percent of total catch OY, so that a 16- percent discard rate for a species meant that 16 percent of that species’ total catch OY would be deducted to derive that species’ landed catch OY. Then, management measures were set to achieve the landed catch OY for that species. Using discard rates was intended to account for dead fish either as dead discard or in landed catch. For all species except lingcod, sablefish, and nearshore rockfish species, it is assumed that discarded fish are generally dead upon discard or die soon after being discarded. Rockfish, particularly deepwater species, are severely stressed by decompression and temperature shock; however, lingcod discard mortality studies show about a 50–percent discard survival rate. There is no exact measure of discard amounts in most fisheries. Assumed amounts are taken into account to determine the fishing mortality level and to prevent overall harvest from exceeding the OYs.

NMFS approach to bycatch management in the 2002 specifications and management measures was a radical departure from historic bycatch management practices. The primary emphasis of the bycatch modeling that NMFS used in the development of the 2002 management measures was the estimation of the total amounts of bycatch species that would be caught coincidentally with available target species. The new management approach structured the amount and timing of cumulative landings limits for target species so that the expected total catch of both target and bycatch species not

exceed their allowable annual harvests. This new approach better accounted for the total mortality of the overfished stocks taken as bycatch than the previous method of applying estimated discard rates to the annual OY to calculate landed catch harvest guidelines. NMFS believes that setting cumulative landing limits for both target and bycatch species based on their co-occurrence in the catch will help ensure that annual OYs for bycatch species are not exceeded. Additional information on the bycatch analysis used in setting the 2002 specifications and management measures is available in the preambles to the proposed and final rules implementing that regulatory package, at 67 FR 1555 (January 11, 2002) and 67 FR 10490 (March 7, 2002,) respectively.

Discard rates for individual groundfish species or species groups are provided in the species-specific footnotes to Table 1 of this document. Although no longer the first line of defense, calculating landed catch OYs based on estimated discard rates is still a strong second line of defense. NMFS new modeling approach for 2002 provided insight into the expected level of discards that are associated with total amounts of catch. Results from the modeling were drawn upon to estimate landed catch OYs for overfished species taken incidentally in the commercial fishery. Landings were monitored so that inseason action could be taken to reduce fishing effort for one or more of the target species. During 2002, notable closures and restrictive regulations were implemented to prevent overharvest of overfished species.

The third line of defense is the revision of the procedures used for evaluating inseason progress of the fishery and for making management adjustments for the target species, and will also help ensure that annual OYs for overfished species are not exceeded. In previous years, when inseason monitoring had revealed that landings of a target species or complex were progressing at a rate that was too fast or too slow, adjustments were made to the cumulative landings limits based primarily on achieving the annual OY for the target species with little consideration of the bycatch implications of changing those limits. For 2002 inseason actions, the bycatch model was used to evaluate the bycatch consequences of any deviations from the projected target fishery landings, and of any changes in target species limits during the remainder of the year. Target species landings limits were not adjusted upwards when an adjustment meant that an associated bycatch species total catch OY would be exceeded, even if the annual OY for the target species would not be achieved.

For setting its 2003 specifications and management measures, the Council again relied on the 2002 bycatch analysis described earlier in this document, adjusted as described below. However, NMFS anticipates revising the co-occurrence rates in the bycatch analysis in early 2003, based on the agency's evaluation of how those rates compare with rates recorded in the first year of the Federal at-sea observer program (August 2001 through August 2002). These revised co-occurrence rates will be used to guide decisions on inseason actions in 2003, just as the original bycatch analysis guided those decisions in 2002.

As discussed in more detail following this section, the Council has introduced new closed areas for 2003, intended to prevent vessels from fishing in waters where overfished species commonly occur. The Council and its advisory bodies expected that introducing new depth based management measures would require adjusting the bycatch analysis to better recognize fishing patterns in the areas remaining open to fishing. Additionally, 2003 depth-related revisions to the bycatch analysis would have to account for expected effort shift by vessels that had historically operated in the formerly open areas.

To account for varying fishing patterns by depth, the Groundfish Management Team (GMT) estimated the percentage of effort shift from closed areas to the remaining open fishing areas, then estimated the percentage of target species OYs that would be taken in the nearshore and offshore open areas. Some deepwater species, such as sablefish, will likely only be taken offshore of the closed areas; similarly, vessels will be targeting nearshore species shoreward of the closed areas. Other species, such as Dover sole, are distributed more broadly and will likely be taken in both the nearshore and offshore open areas. Once the GMT had set formulas to account for effort shift and target species availability in open fishing areas, the GMT addressed expected bycatch rates within those open areas.

Using the bycatch rates approved by the Council for the 2002 groundfish fisheries, the GMT analyzed bycatch rates for the same combinations of targeted and overfished stocks by depth and by two-month fishing period in trawl logbooks. Because the bycatch rates from trawl logbooks for the total fishing area were lower than those chosen by the Council for 2002 management, the GMT assumed that depth-specific bycatch rates shown in the trawl logbooks were not adequately conservative. Thus, the GMT adjusted depth-specific trawl logbook bycatch rates by the ratio between the Council's 2001/2002 selected rates for all areas and the logbook rates for all areas. From these adjustments, the GMT set new depth- and fishing period-specific bycatch rates that were compatible with the more conservative all areas bycatch rates the Council set in 2002. The SSC evaluated the GMT's methodology for setting depth based bycatch rates for 2003 and noted that the methods chosen were reasonable, yet would benefit from the expected 2003 analysis of the bycatch model against data gathered in the at-sea observer program.

In designing trip limits, season closures, and other management measures, the GMT crafted trip limit scenarios for targeted and bycatch species taken in the open areas that were calculated to keep the total catch (landed + discard) of targeted species and overfished species below their respective OYs. The Council's ultimate trip limit, season, and area closure recommendations were shaped largely by the depth-adapted 2001/2002 bycatch and discard analysis and are proposed in section IV of this proposed rule.

Depth-based Management

Since 1998, groundfish management measures have been shaped by the need to rebuild overfished groundfish stocks. The over 80 species in the West Coast groundfish complex mix with each other to varying degrees throughout the year and in different portions of the water column. Some species, like Pacific whiting, are strongly aggregated, making them easier to target with relatively little bycatch of other species. Conversely, other species like canary rockfish may occur in species specific clusters, but are also found co-occurring with a wide variety of other groundfish species. Over the past several years, groundfish management measures have been more carefully crafted to recognize the tendencies of overfished species to co-occur with healthy stocks in certain times and areas.

With the 2002 specifications and management measures, the Council introduced a new bycatch analysis model, discussed earlier, that allowed managers to set trip limits so that more abundant stocks were more strongly targeted in times when they were less likely to co-occur with overfished stocks. The 2002 management measures primarily varied by time (two-month period) and by north-south management area (north of Cape Mendocino, between Cape Mendocino and Point Conception,

south of Point Conception, etc.) For 2003, the Council has recommended using a new management tool: depth-based closures intended to prevent vessels from fishing in depths where overfished species commonly occur while still allowing some fishing for more abundant stocks in the open areas.

Depth-based management closures for the continental shelf were first introduced on September 13, 2002 (67 FR 57973), with an emergency rule that closed trawling in the months of September-December 2002 in waters north of 40°10′ N. lat. (approximately at Cape Mendocino) at depths where darkblotched rockfish commonly occurs. At its June 2002 meeting, the Council had found that the darkblotched rockfish estimated total catch was expected to exceed the OY before the end of 2002. In order to protect darkblotched rockfish from overharvest while still allowing fisheries access to underharvested healthy stocks, the Council asked NMFS to implement an emergency rule that would allow trawl gear only shoreward of 100 fm (184 m) and offshore of 250 fm (461 m). NMFS reviewed and implemented the Council's request, revising the restrictions to allow fishing shoreward of 100 fm (184 m) only in October-December and offshore of 250 fm (461 mt) in September-December, to prevent overharvest of canary rockfish and darkblotched rockfish in September.

The September-December 2002 closure was intended to specifically protect darkblotched rockfish, which are commonly caught by trawl gear in waters of 70–250 fm (128–457 m) depth. In designing 2003 management measures, the Council considered depth closures that would provide protection for several overfished species. Different closed areas are provided for different gear types, as not all gear types encounter each overfished species at the same rate or in similar areas. POP, for example, is almost exclusively caught in trawl fisheries, whereas yelloweye rockfish tends to be caught by hook-and-line gear.

For the limited entry bottom trawl fisheries north of 40°10′ N. lat., canary rockfish tends to be available in 20–200 fm (37–366 m) depths, with higher catches in more shallow areas during the summer. As mentioned earlier, darkblotched rockfish tends to be found in 70–250 fm (128–457 m). To provide protection for all of these stocks in 2003, the Council recommended a closed area for bottom trawl fisheries north of 40°10′ N. lat. of 100–250 fm (184–461 m) depths, with the inshore closed area boundary line moving to 75 fm (137 m) for the months of July-August. This closure is expected to protect canary and darkblotched rockfish in areas where they have historically been taken by trawl fisheries. In the months of January-February and November-December, the offshore closed area boundary would be revised to allow some bottom trawling in areas where petrale sole tends to aggregate. (See paragraph IV A. (19) for exact coordinates.) This closed area is also expected to protect other northern continental shelf and slope overfished species, such as lingcod, widow rockfish, POP, and yelloweye rockfish. Large footrope bottom trawling would be prohibited shoreward of the closed areas. Midwater trawling, as defined at 50 CFR 660.322(b)(6) would be permitted within the closed area for Pacific whiting, yellowtail and widow rockfish because these fishing strategies have historically encountered only small amounts of overfished species as bycatch. Trawling with open access exempted gear for species other than groundfish (spot prawn off Oregon and pink shrimp north of 40°10′ N. lat) would be permitted within the closed area. However, the States require groundfish excluder devices to be used in the pink shrimp fishery.

In the limited entry bottom trawl and open access exempted trawl fisheries south of 40°10′ N. lat., bocaccio tend to be found in 45–160 fm (82–293 m) depths and the greatest number of bocaccio tend to be taken between 40°10′ N. lat. and 34°27′ N. lat. (Point Conception.) Although darkblotched rockfish are considered a northern species, they are also found between 40°10′ N. lat. and 38° N. lat. To protect these overfished species, the Council recommended closing bottom trawling between 40°10′ N. lat. and 38° N. lat. in 60–250 fm (110–457 m) depths, except that the inshore closed area boundary would be at 50 fm (91 m) in January-February. Between 38° N. lat. and 34°27′ N. lat., bottom trawling would be closed in 60–150 fm (110–274 m) depths, except that the inshore closed area boundary would be at 50 fm (91 m) in January-February. South of 34°27′ N. lat., bottom trawling would be permitted along the mainland coast (not off California islands) inside of 100 fm (183 m). Around the California islands, bottom trawling would be prohibited shoreward of 150 fm (274 m). Midwater trawling, as defined at 50 CFR 660.322(b)(6), would be permitted within the closed areas only for widow rockfish and whiting. For all areas, large footrope bottom trawling would be prohibited shoreward of the closed areas. Small footrope trawls are less able to fish in the rocky habitat preferred by many of the overfished rockfish species. In addition to these depth closures, the CCAs will remain closed to fishing offshore of 20 fm (37 m).

North of Cape Mendocino, CA, limited entry fixed gear and open access hook-and-line fisheries have a greater effect on yelloweye rockfish and a lesser effect on darkblotched rockfish than trawl gear fisheries. Thus, depth restrictions for these fisheries were designed to prevent hook-and-line gear from operating in depths where yelloweye rockfish are commonly found, 100 fm (183 m) and shallower. The Council has recommended closing limited entry and open access hook-and-line fishing shoreward of the 100 fm (183 m) contour off the Washington coast, and between 27 fm (49 m) and 100 fm (183 m) off the Oregon coast and off California north of 40°10′ N. lat. The 27–fm (49–m) contour occurs entirely in State waters off the State of Washington and commercial fishing for groundfish is prohibited in State waters off Washington, making an inshore closed area boundary moot for that State. Fishing is permitted shoreward of the 27 fm (49 m) boundary off Oregon and northern California because this area tends to be inshore of the areas where overfished species occur.

South of 40°10′ N. lat., limited entry fixed gear and open access fisheries will be primarily constrained by management measures to protect bocaccio. Fishing will be prohibited between the 20–fm (37–m) and 150–fm (274–m) depth contours throughout the year. The Council recommended an exception to this prohibition for commercial vessels using hook-and-line gear with no more than 12 hooks per line and up to 1 lb (.45 kg) weight per line, using hooks no larger than ‘‘Number 2’’ hooks, which measure 11 mm (0.44 inches) point to shank. This type of gear is used by vessels fishing for Pacific sanddabs, an abundant species that does not usually co-occur with overfished species. Hook-and-line vessels will also be permitted to fish in waters of 20–60 fm (37–110 m) depths during July and August. In addition to these depth closures, the CCAs will remain closed to fishing offshore of 20 fm (37 m).

Anticipating inseason adjustments to depth-based management measures, designed to protect overfished species while allowing the harvest of healthy groundfish stocks, the states of Oregon and California supplied coordinates for two additional depth contours. A 50–fm (91–m) depth contour off the state of Oregon and/or a 150–fm (270–m) depth

contour between 46°16′ N. lat. and 38°N. lat. may be implemented at any time during 2003 through an inseason action.

Recreational fisheries off Washington, Oregon, and California north of 40°10′ N. lat. will be subject to fewer depth restrictions than the commercial fisheries, primarily because most recreational vessels tend to operate in the nearshore area inside State waters. Off Washington, recreational fishing for groundfish and halibut will be prohibited inside the YRCA, a C-shaped closed area off the northern Washington coast. Coordinates for the YRCA will be defined at 50 CFR 660.304(d). Off Oregon and California north of 40°10′ N. lat., recreational fishing for groundfish will be closed outside of 27 fm (49 m) if either the yelloweye or canary rockfish recreational fisheries set asides are projected to be achieved.

As in past years, recreational fisheries off California south of 40°10′ N. lat., will be constrained by depth in order to reduce catch of bocaccio and other overfished rockfish species. Recreational fishing for groundfish will be prohibited entirely in waters offshore of the 20 fm (37 m) depth contour. The CCAs will also remain closed to fishing offshore of 20 fm (37 m). Coordinates defining the CCAs have changed modestly to ensure that the CCAs comply with depth-based closures for waters off southern California. CCA coordinates will be defined at 50 CFR 660.304(c).

Many of the closed areas and boundary lines are generally described using a fathom contour line. All of these lines, except the 20 fm (37 m) contour off California south of 40°10′ N. lat. and the 3–nautical mile State management line off California, are specifically defined in the regulations at IV.A. (19), using latitude/longitude waypoints. These waypoint coordinates provide straight-line boundaries that approximate the depth-contours to provide clarity to the closed area boundaries for enforcement purposes. To ensure that consistent nomenclature is used coastwide, an area closed to fishing for groundfish will be referred to as a ''Groundfish Conservation Area'' in general, regardless of whether the boundaries of that area change during the year. The YRCA and the CCA are defined by coordinates that are fixed throughout the year. The larger, gear or sector-specific closed areas described by depth contour boundaries for the 2003 fishing year will be referred to as ''Rockfish Conservation Areas,'' or RCAs. For example, there will be both a trawl RCA and a non-trawl RCA north of 40°10′ N. lat. Boundaries for the RCAs will be referred to as either the ''inshore boundary,'' meaning the RCA boundary or borderline that is closest to shore, or the ''offshore boundary,'' meaning the RCA boundary or borderline that is farthest offshore.

At its September meeting, the Council adopted the State of California's recommendation to create a California Rockfish Conservation Area (CRCA) in waters south of 40°10′ N. lat. To ensure consistent coastwide nomenclature, this area will be referred to as an RCA in Federal regulations. NMFS anticipates that the Council and the State of California may continue to refer to the CRCA in management discussions. This RCA south of 40°10′ N. lat. will be an area of restricted or no fishing intended to protect overfished rockfish species. This restricted area is proposed as ocean waters of 20–250 fm (37–457 m) depth between 40°10′ N. lat. and 38° N. lat and waters of 20–150 fm (37–274 m) depth between 38° N. lat. and the U.S. border with Mexico. The restrictions for that area that apply to the groundfish fisheries and the exceptions to those restrictions are described earlier in the section on depth based management. Any vessel allowed to fish within the CRCA based on an exception to a fishing restriction would be required to accommodate a State or Federal observer, if requested. In creating this RCA, the Council and the State of California wished to ensure that they had accounted for all fisheries that operate in waters where overfished rockfish species occur, whether State or federally managed. Several of the restrictions within the RCA affect only State-managed species and will be implemented through State regulations. Other restrictions affect federally-managed species other than groundfish, such as salmon, and will be implemented through Federal salmon regulations.

Vessel Monitoring System (VMS)

Routine monitoring of the fishing fleet is used to ensure that vessel operators comply with fisheries regulations. Traditional monitoring techniques include the monitoring of fisheries from air and surface craft, observer programs and analysis of catch records and vessel logbooks. The efficiency of these surveillance techniques can be dramatically enhanced by the addition of a VMS. VMS is a tool that is commonly used to monitor vessel activity in relationship to geographically defined management areas where fishing activity is restricted. VMS transmitters installed aboard each vessel automatically determine the vessel's location and transmit that position to a processing center via a communication satellite where the information is validated and analyzed before being disseminated for fisheries management, surveillance and enforcement purposes. Transmitters are designed to be tamper resistant and automatic.

Time area closures have long been used to restrict fishing activity in the Pacific Coast groundfish fishery in order to keep harvests within sector allocations and at sustainable levels or to prohibit the catch of certain species. Until September 2002, geographically defined areas tended to be in the nearshore area or defined by simple latitude lines. On September 13, 2002, NMFS published an emergency rule that established a Darkblotched Rockfish Conservation Area for the Pacific Coast groundfish fishery (67 FR 57973), a large irregularly shaped geographical area defined by a series of latitudinal and longitudinal coordinates that extends far offshore with much activity being beyond the range of State enforcement capabilities. Coastwide, depth-based areas defined for 2003 are similarly defined. Traditional enforcement of time areas closures is most effective when the geographical areas are nearshore, small, and defined by simple line. Therefore, management and enforcement of the large irregularly shaped areas proposed for the Pacific Coast groundfish fishery would be greatly enhanced if a VMS program were established. The Council recommended that NMFS move forward in developing a VMS program with the intention of having a system in place by mid-year 2003.

For October-December 2002, Washington and Oregon were able to monitor mid-water fisheries for yellowtail and widow rockfish in the DBCA through a vessel declaration process. The declaration process required vessels intending to fish within the closed area with mid-water gear to declare their intentions to the States. The States were able to fund this process because each vessel was limited to two trips per 2–month period, which also limited the number of declarations the States would have to track. In 2003, the States will not be able to monitor fisheries occurring within the closed areas with a declaration process because they are unable to fund such a process. Federal regulations proposing implementation of a VMS system will address the possible need for a Federal declaration system in conjunction with VMS coverage.

II. Commercial and Recreational Fisheries

Since 1994, the non-tribal commercial groundfish fishery has been divided into

limited entry and open access sectors, each with its own set of allocations and management measures. Species or species group allocations between the two sectors are based on the relative amounts of a species or species group taken by each component of the fishery during the 1984–1988 limited entry permit qualification period (50 CFR 660.332). The FMP allows suspension of this allocation formula for overfished species when changes to the traditional allocation formula are needed to better protect overfished species (FMP, section 5.3.2).

Historically, groundfish species and/or species groups have not been allocated between the commercial and recreational fisheries. Fishery managers instead estimated the amount that would be taken in the recreational fisheries and set that amount aside before determining the allowable harvest for the non-tribal commercial sectors. For 2003, the Council has recommended adopting nearshore groundfish allocations between the recreational and commercial fisheries. These allocations were proposed by the States of Oregon and California for waters off their coasts north and south of 40°10′ N. lat. and are intended to maintain the ratio between recreational and commercial landings 2000. Most of the fish subject to the allocation will be taken in State waters, but State-Federal management of these nearshore species is coordinated through the Council. Commercial groundfish fishing is prohibited in Washington State waters.

Groundfish species or species group allocations and set asides for the tribal and non-tribal sectors, and between the different non-tribal commercial and recreational sectors, are detailed in Tables 1a and 1b. All OYs, allocations and set asides are expressed in terms of total catch. The limited entry/open access allocations for bocaccio, canary, darkblotched, yelloweye rockfish, and the nearshore rockfish species group would be suspended to allow the Council to better develop management measures that provide harvest opportunity for more abundant stocks while protecting overfished stocks. Estimates of trip-limit induced discards are taken ‘‘off the top’’ and in accordance with the bycatch and discard analysis described earlier in this notice before setting the non-tribal sector allocations, except for estimates of sablefish discards as explained in the footnotes to Table 1a. Landed catch equivalents are the harvest goals used when adjusting trip limits and other management measures during the season. Estimated bycatch of yellowtail, widow, canary, and darkblotched rockfish in the offshore whiting fishery is also deducted from the limited entry allocations before determining the landed catch equivalents for the target fisheries for widow and yellowtail rockfish.

Open Access Allocations

The open access fishery is composed of vessels that operate under the OYs, quotas, and other management measures governing the open access fishery, using (1) exempt gear or (2) longline or pot (trap) gear fished from vessels that do not have limited entry permits endorsed for that gear. Exempt gear includes all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp, spot or ridgeback prawns (shrimp trawls) and halibut or sea cucumbers south of Pt. Arena, CA (38°57′30″ N. lat.)

Open access allocations are derived by applying the open access allocation percentages to the commercial OY. The commercial OY is the total catch OY after subtracting any tribal allocations and set-asides for recreational fisheries or compensation fishing for conducting resource surveys. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery is the fishery composed of vessels using limited entry gear fished pursuant to the OYs, quotas, and other management measures governing the limited entry fishery. Limited entry gear includes longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Pt. Arena, CA. A sablefish endorsement is also required for a vessel to operate in the limited entry primary fixed gear season for sablefish.

The limited entry allocation (in total catch) is the OY reduced by (1) set-asides, if any, for treaty tribal fisheries, recreational fisheries, or compensation fishing for participation in resource surveys (which results in the commercial OY or quota); and (2) the open access allocation. (Allocations for Washington coastal tribal fisheries are discussed in Section V. and, for Pacific whiting, at paragraph IV.B.(3).)

Following these procedures, the Regional Administrator calculated the amounts of allocations that are presented in Table 1a of this document. Unless otherwise specified, the limited entry and open access allocations would be treated as OYs or harvest guidelines in 2003. There may be slight discrepancies from the Council's recommendations due to rounding.

III. 2003 Management Measures

Before 2000, the major goals of groundfish management were to prevent overfishing while achieving the OYs and to provide year-round fisheries for the major species or species groups. Over time, however, it became apparent that a number of species could not continue to be harvested year-round at a constant harvest rate. New legislative mandates under the Magnuson-Stevens Act (as amended by the Sustainable Fisheries Act in 1996) gave highest priority to preventing overfishing and rebuilding overfished stocks to their MSY levels. The National Standard Guidelines at 50 CFR 600.310 interpreted this as ‘‘weak stock management,’’ which means that harvest of more abundant stocks may need to be curtailed to prevent overfishing or to rebuild overfished stocks.

Nine FMP species were declared overfished as of March 2002 (lingcod, bocaccio, POP, canary rockfish, cowcod, widow rockfish, darkblotched rockfish, yelloweye rockfish and Pacific whiting). Of the management measures intended to protect these species, measures for canary and darkblotched rockfish protection in the north and bocaccio protection in the south are the most constraining, because both species are broadly distributed on the continental shelf. Canary rockfish management is constraining because canary rockfish are caught directly or incidentally in most West Coast fisheries (groundfish and non-groundfish.) In order to rebuild these overfished species while allowing harvest of more abundant stocks, the Council chose management measures that prohibit bottom trawling over large portions of the continental shelf, where lingcod, bocaccio, canary rockfish, cowcod, widow rockfish, yelloweye rockfish, and, to a lesser extent, POP and darkblotched rockfish occur. As discussed earlier in this notice, the depth based management measures introduced for 2003 are gear-specific and have been crafted to maximize fishing opportunity for more abundant stocks in times when and areas where bycatch and discard of overfished and depleted stocks is estimated to be lowest.

Management measures for the limited entry fishery are found in section IV. Most cumulative trip limits, size limits, and seasons for the limited entry fishery are set out in Tables 3 and 4 of section IV. However, the limited entry nontrawl sablefish fishery, the midwater trawl fishery for Pacific whiting, and the hook-and-line fishery for black rockfish off Washington are managed separately from the majority of the groundfish species and are not fully addressed in the tables. The management structure for these fisheries has not changed since 2002, except for the level of trip limits for sablefish and Pacific whiting, and is described in paragraphs IV.B.(2)-(4) of section IV. Other provisions for the 2002 fisheries not explicitly addressed above would remain in effect for 2003 and are repeated in section V. of this document.

After hearing proposals and advice from its advisory entities and public testimony at its September 2002 meeting, the Council recommended the following actions for management in 2003.

Limited Entry Trawl

For the limited entry trawl fishery, the Council recommended a suite of gear restrictions, area closures and cumulative trip limits designed to allow fishing with gear in times and areas where incidental catch of overfished or depleted species will be minimized. In 2002, limits for some species groups were more varied than those proposed for 2003 because the 2002 limits were set to encourage (higher limits) or discourage (lower limits) fishing in different depths. Because the Council has recommended depth based closures for 2003, trip limits for those species taken in areas that remain open vary less than in 2002. Many of the more abundant groundfish stocks, such as the suite of flatfish species, are harvested almost exclusively with trawl gear, rather than with hook-and-line gear. Similarly to closed areas designed to protect overfished species taken with trawl gear, the limited entry trawl trip limit regime for more abundant stocks is gear-specific.

Flatfish fisheries are managed with more restrictive trip limits and an expanded closed area during the summer months, when participation is greater and trawl tows for flatfish are more likely to encounter overfished species. Dover sole, sablefish, thornyhead (DTS) complex limits vary only slightly throughout the year because fishing for these species is expected to largely take place on the continental slope, beyond the offshore boundary of the trawl RCAs. North of 40°10′ N. lat., the trawl RCA is primarily intended to protect canary and darkblotched rockfish; south of 40°10′ N. lat., the trawl RCA is primarily intended to protect bocaccio.

As in 2002, trawl-caught lingcod retention would be permitted throughout the year, with higher limits in the summer months. Lingcod caught incidentally during winter trawl fisheries would otherwise be discarded and thereby increase the overall lingcod discard level in the trawl fisheries. The lingcod landings limits of 800 lb (363 kg) per 2–month period in the winter months and 1,000 lb (454 kg) per 2–month period in the summer months are not high enough to give trawlers an incentive to target lingcod. Total lingcod catch is expected to be well under the lingcod OY due to fishery restrictions intended to protect other overfished species.

For 2003, the Council recommended continuing the use of differential trip limits for limited entry trawlers operating with different trawl gear configurations: bottom trawl with footropes greater than 8 inches (20.5 cm) in diameter (large footrope); bottom trawl with footropes smaller than 8 inches (20.5 cm) in diameter (small footrope); and midwater or pelagic trawl. Trawling with footropes that have roller gear or other large gear designed to bounce over tough rock piles tends to allow those vessels greater access to rocky areas where several of the overfished species congregate. Therefore, landings of shelf rockfish are prohibited if large footrope trawls (such as roller gear) are used (or are on board the vessel); small amounts of shelf rockfish bycatch may be landed if small footrope trawls are used; and, targeting more abundant shelf rockfish stocks is encouraged only if midwater trawls are used. Midwater trawl gear generally has very low bycatch of overfished species because most of those species aggregate on or near the ocean bottom, where mid-water trawl gear does not operate. To further ensure that large footrope trawl gear is not used in nearshore and continental shelf areas, bottom trawling with large footrope gear is prohibited shoreward of the RCAs. Within the RCAs, bottom trawling will be prohibited for all groundfish and mid-water trawling will be permitted only for Pacific whiting, widow rockfish and yellowtail rockfish north of 40°10′ N. lat. and only for whiting and widow rockfish south of 40°10′ N. lat. If a vessel fishes in an RCA, it may not participate in any fishing on that same trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside the RCA. Additionally, only one trawl gear type will be permitted on board per fishing trip. Cowcod prohibitions and CCAs apply to limited entry trawl vessels, although there are few limited entry trawl vessels operating south of Point Conception in CCA waters.

Large footrope trawls may still be used for deepwater fisheries where fewer overfished species are encountered. These fisheries primarily take Dover and rex soles, thornyheads, sablefish, and deepwater rockfish. Higher limits of yellowtail and widow rockfish are available when those species are taken with midwater trawl gear during the primary whiting season. Yellowtail rockfish taken with small footrope gear is restricted to 1,000 lb (454 kg) per month unless it is taken with flatfish, or taken during November-December. These combined yellowtail rockfish management measures are intended to allow yellowtail rockfish retention in fisheries, times and areas where incidental harvest of overfished species is lower.

Limited Entry Fixed Gear

Similar to the limited entry trawl fisheries, trip limit opportunities and area closures in the limited entry fixed gear fisheries are arranged to minimize opportunities for intercepting overfished species. As discussed earlier, limited entry fixed gear fisheries will be closed in times when and areas where they are expected to intercept overfished species.

North of 40°10′ N. lat., management measures to protect yelloweye rockfish constrain the limited entry fixed gear fishery by prohibiting those vessels from operating in an RCA of 27–100 fm (49–183 m) depths. Washington State waters (shore to 3 nm) are closed to commercial groundfish fishing and the 27 fm (49 m) contour is entirely within State waters, which means that limited entry fixed gear vessels operating off Washington will not have nearshore fishing opportunities. South of the Washington/Oregon border at 46°16′ N. lat. and north of 40°10′ N. lat., the primary limited entry fixed gear fishing opportunity shoreward of the RCA will be for nearshore rockfish. Similar to 2002, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for species other than black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species.

South of 40°10′ N. lat., the limited entry fixed gear RCA is in 20–150 fm (37–274 m) depths to protect bocaccio and other overfished rockfish. In 2001

and 2002, this fishery and the open access hook-and-line fishery had season structures tied to that of the recreational fishery south of 40°10′ N. lat. This season structure link was intended to facilitate enforcement, so that similar gear types would be either on or off the water at the same time. For 2003, the recreational and commercial fisheries will be separated because the recreational season has been shifted to a six month July-December block. If commercial hook-and-line fisheries were restricted to July-December, key fishing and marketing months in spring and early summer would be closed. Trip limits for species available in the open inshore area tend to be higher in the summer months. For the first time in 2003, species in the minor nearshore rockfish complex in the south will be managed with different trip limits for a shallow nearshore group, a deeper nearshore group, and California scorpionfish (shallow and deeper nearshore groups defined at IV.A.(20) and in Table 2.) These groups will be managed separately because the Council expects an increase in nearshore fishing effort due to fishing being prohibited in the RCA and wishes to spread that effort through the different minor nearshore species that will be available shoreward of the RCA. Cowcod prohibitions and closures continue to apply to limited entry, fixed gear vessels.

Limited entry fixed gear fisheries for sablefish will likely be concentrated offshore of the RCAs north and south of 40°10′ N. lat. Larger sablefish, which sell for a higher price per pound than small sablefish, tend to be found farther offshore. The primary sablefish fishery will again be held from April 1 through October 31 north of 36° N. lat. Minor slope rockfish are often caught in association with sablefish, therefore vessels will be permitted minor slope rockfish landings of up to 25 percent of the weight of sablefish landed during the months of March through October. Minor slope rockfish may not be landed unless taken with sablefish so as to discourage directed targeting on that complex. The northern overfished slope rockfish species, darkblotched rockfish and POP, are not commonly caught with fixed gear. Historically, yelloweye rockfish have been caught incidentally in hook-and-line sablefish fisheries. In 2003, however, hook-and-line sablefish fisheries will be moved offshore of yelloweye rockfish habitat through implementation of the RCAs. Yelloweye rockfish retention will again be prohibited in the 2003 limited entry fixed gear fisheries.

As in 2001–2002, limited entry fixed gear fishing for lingcod will be prohibited during January through April and during November through December. These closures are intended to protect nest-guarding lingcod during the spawning and nesting season. Nest-guarding lingcod are more available to fixed gear than to trawl gear, because lingcod nest in rocky habitat that tears trawl gear while line gear may be used successfully in rocky areas. Winter closures for fixed gear are intended to eliminate fixed gear lingcod targeting.

Open Access Nontrawl Gear (Hook-and-line, Troll, Pot, Setnet, Trammel Net)

The open access nontrawl fishery is managed separately from the limited entry fixed-gear fishery, but overfished species protection measures are similar for both sectors. As in the past, open access cumulative trip limits continue to be applied mostly to 2–month periods, and thornyheads may not be taken and retained north of 34°27′ N. lat. Season structuring and RCAs are similar to those for the limited entry fixed gear fisheries, and implemented to protect the same overfished species. The lingcod fishery for all open access nontrawl gears is also subject to the same closures and size limits as the limited entry fixed gear fisheries. Similar to 2002, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for species other than black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species. Cowcod prohibitions and closures apply to all open access vessels.

Open access cumulative limits may exceed those for limited entry. If a vessel with a limited entry permit uses open access gear (including exempted trawl gear) and the open access cumulative limit is larger, the vessel will be constrained by the smaller, limited entry cumulative limit for the entire cumulative period.

Open Access Exempted Trawl Gear

Open access exempted trawl gear (used to harvest ridgeback prawns, California halibut, sea cucumbers, pink shrimp, or spot prawns in Oregon) is managed with both ‘‘per trip’’ limits, cumulative trip limits, and area closures. These trip limits are similar to those in 2002, and the species-specific open access limits apply but may not exceed the overall groundfish limits. The groundfish limits in the pink shrimp fishery are 500 lb (227 kg) of groundfish per day, not to exceed 1,500 lb (680 kg) per trip in the pink shrimp fishery. For other exempted trawl gears, there is a 300 lb (136 kg) per trip limit of groundfish. The pink shrimp fishery is subject to species-specific limits that are different from other open access limits for lingcod, canary rockfish, and sablefish. As with open access nontrawl gears, thornyheads may not be taken and retained north of 34°27′ N. lat. RCAs for the limited entry trawl fishery also apply to open access exempted trawl fisheries south of 40°10′ N. lat. Cowcod prohibitions and closures apply to all open access vessels.

South of 40°10′ N. lat., the RCAs for exempted trawl gear are similar to those for limited entry trawl gear. Between 40°10′ N. lat. and 38° N. lat., trawling is prohibited in 60–250 fm (110–457 m) depths (50–250 fm (91–457 m) in January-February) and large footrope trawling is prohibited shoreward of the RCA. Between 38° N. lat. and 34°27′ N. lat., trawling is prohibited in 60–150 (110–457 m) depths (50–250 fm (91–457 m) in January-February) and large footrope trawling is prohibited shoreward of the RCA. From 34°27′ N. lat. to the U.S. border with Mexico, trawling is prohibited in 100–150 fm (183–274 m) depths and large footrope trawling is prohibited shoreward of the RCA.

In addition to the trip limit restrictions and area closures south of 40°10′ N. lat., all three States are requiring that vessels operating in their pink shrimp trawl fisheries use finfish excluders. The States of Washington and California have banned trawling for spot prawns, requiring that spot prawn fishery participants use low bycatch pot gear. Oregon is in the process of considering whether to similarly ban trawling for spot prawns. The State of California is also requiring that ridgeback shrimp trawlers use finfish excluder devices, similar to requirements in the more northern pink shrimp trawl fishery.

Recreational Fishery

Recreational fisheries effort has also been constrained to protect overfished species, particularly for lingcod, canary rockfish, bocaccio, and yelloweye rockfish, which have significant recreational catches. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, and size limits to best fit the needs of their recreational fisheries, while also meeting conservation goals.

For lingcod, Washington proposed closing their recreational fishery for 5 months (January 1 - March 15, October 15 - December 31) and maintained its 2 fish bag limit and its 24 inch (61 cm) minimum size limit. For Oregon and California north of 40°10′ N. lat., the States proposed increasing the lingcod bag limit to 2 fish, and continuing the

year-round fishery and 24 inch (61 cm) minimum size limit. For California, south of 40°10′ N. lat., California proposed maintaining its 2–lingcod bag limit and 24- inch (61–cm) size limit, but restricting its fishery to a 6- month season of July-December.

Recreational fisheries management off Washington and Oregon will again be shaped this year by a need to maintain low yelloweye rockfish catch. Measures taken to protect yelloweye rockfish in 2002 will be maintained and expanded upon. Washington also proposed maintaining its 10 rockfish bag limit, but reducing its canary rockfish sublimit to 1 fish and prohibiting yelloweye rockfish retention. In the past, Oregon has had an overall rockfish bag limit of 10 fish. For 2003, Oregon proposed including rockfish within an overall 10 marine fish bag limit, a category that includes all marine fish except salmon, tuna, surfperch, sanddab, lingcod and baitfish (herring, anchovy, smelt, and sardine.) For Oregon anglers who take marine fish other than rockfish, this marine fish bag limit will reduce the amount of available rockfish. Within the 10 marine fish bag limit, Oregon has proposed a sublimit of no more than one canary rockfish and no more than one yelloweye rockfish. In reviewing the take of yelloweye rockfish in their recreational fisheries, the States of Washington and Oregon found that yelloweye rockfish is most frequently taken by vessels that travel offshore to target Pacific halibut. However, yelloweye rockfish are not taken while the vessel is fishing for halibut, but rather after the vessel has completed its halibut fishing and is headed for port. Therefore, prohibiting the retention of yelloweye rockfish when halibut are on the vessel should eliminate the directed harvest of yelloweye rockfish during halibut fishing trips, without causing discard of incidentally-caught yelloweye rockfish. Oregon has proposed prohibiting the retention of yelloweye rockfish during its all-depth halibut fisheries. Washington has proposed prohibiting all yelloweye rockfish retention off its shore, and will also prohibit recreational fishing for groundfish and halibut within the YRCA.

Recreational fishing restrictions proposed by California are intended to ensure that fishing mortality does not exceed limits associated with rebuilding plans for bocaccio, canary rockfish, cowcod, and lingcod. In 2001 and 2002, California's recreational fisheries management measures were not sufficiently conservative to prevent their fisheries from exceeding their set asides for overfished rockfish species. Therefore, California has proposed notably more restrictive measures for 2003. North of 40°10′ N. lat., California recreational management measures will continue to be similar to those for waters off Oregon. South of 40°10′ N. lat., where the significant majority of California recreational fisheries occur, recreational fishing will be closed entirely January through June and open only shoreward of 20 fm (37 m) July through December. The season was restructured to maximize recreational harvest opportunity while ensuring that nearshore groundfish, California scorpionfish, and lingcod shoreward of 20 fm (37 m) are not overharvested. California proposed to maintain its 10 rockfish bag limit, but set that within a 10 fish nearshore groundfish bag limit, similar to Oregon's marine fish bag limit. Within the nearshore groundfish limit, no more than 2 fish may be rock or kelp greenling and no more than three fish may be cabezon. Within the 10–rockfish bag limit, no more than two may be shallow nearshore rockfish. Unlike in previous years, bocaccio, canary rockfish and yelloweye rockfish retention will be prohibited. As with the commercial fisheries, cowcod retention will continue to be prohibited and recreational fishing within the CCAs offshore of 20 fm (37 m) will be prohibited.

Council Revisions to Its Management Measures Recommendations

At its October 28 through November 1, 2002 meeting in Foster City, CA, the Council made recommendations to modestly alter some of the management measures recommendations it had made at its September 2002 meeting. These recommendations were made at the November meeting, when the public had not expected to have opportunity to comment on 2003 management measures. In addition, these are minor changes that need not be in place on January 1. 2003. Thus, NMFS is proposing the Council's November recommendations as part of this proposed rule, but will not implement them for January-February 2003 via the emergency rule implementing management measures for those two months. The Council made the following recommended revisions to its September 2002 management measures recommendations, all of which are minor and are not expected to alter the overall effect of this management package on the environment:

1. For vessels participating in the open access exempted trawl fishery for California halibut south of 38°57′30″ N. lat., continue overall groundfish 300 lb (136 kg) per trip limit, provided that weight of groundfish landed does not exceed weight of non-groundfish species landed. However, allow up to 100 lb (45 kg) of groundfish to be landed without the vessel having to meet that ratio requirement, provided that at least one California halibut is landed.

2. For vessels participating in the open access exempted trawl fishery for California halibut south of 38°57′30″ N. lat. the monthly flatfish cumulative limit of 3,000 lb (1,361 kg), no more than 300 lb (136 kg) of which may be species other than Pacific sanddabs, is proposed to be revised so that the overall monthly cumulative limit is retained, but no more than 300 lb (136 kg) of that cumulative amount may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish. Vessels fishing for sea cucumber with open access exempted trawl gear that also take California halibut would still have access to the 300 lb (136 kg) per trip limit, but only if their landings of groundfish species did not exceed their landings of non-groundfish species.

3. Continue to allow hook-and-line fishing for Pacific sanddabs within the RCAs south of 40°10′ N. lat. However, instead of allowing this fishing with up to 5 hooks per fishing line and no more than 5 lb (2.27 kg) line weight, allow this fishing with up to 12 hooks per fishing line and no more than 1 lb (.45 kg) line weight for commercial fisheries and no more than 2 lb (.91 kg) line weight for recreational fisheries.

4. Revise the coordinates of the YRCA so that they define a ''C-shaped'' area off the north Washington coast instead of an ''L-shaped'' area to better protect areas where yelloweye rockfish are found, and to be consistent with the measures proposed for the recreational fisheries for halibut.

Fishing Communities and Impacts

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the 10 National Standards, one of which requires that conservation and management measures shall, consistent with the conservation requirements of the Act, ''take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and (B), to the extent practicable, minimize adverse economic impacts on such communities.'' Commercial and recreational fisheries for Pacific coast groundfish contribute to the economies and shape the cultures of numerous fishing communities in Washington, Oregon, and California. Meeting the needs of fishing communities has

become increasingly difficult because the Council manages an overcapitalized fleet that harvests a multi-species complex with several overfished species. In recommending this year's specifications and management measures, the Council accommodated some of the needs of those communities within the constraints of Magnuson-Stevens Act requirements to rebuild overfished stocks, prevent overfishing, and minimize bycatch. In general, the Council allows the largest harvest possible, consistent with conservation needs of the fish stocks.

West Coast groundfish intermix by species, which means that interception and incidental mortality of overfished species is inevitable even if retention of a particular species is prohibited. As discussed earlier, the Council's primary goal for 2003 was to minimize opportunities for incidental take of overfished species while allowing as much fishing opportunity of more abundant stocks as possible. To achieve this, the fishing seasons and area closures are structured both to maximize target species catch while minimizing overfished species incidental take and to allow minimal retention of overfished species where incidental take will inevitably occur. Larger area closures are intended to ensure that few vessels have opportunities to fish in waters where overfished species commonly occur.

For 2003, the Council continued the year-round fishery opportunity that is important to the fishing and processing sectors for maintaining continuous employment opportunities and maintaining consistent groundfish marketing opportunities. Depth closures and gear restrictions would modify the cumulative trip limit system to allow fishing for at least some groundfish species at all times during the year. Gear restrictions prohibit bottom trawling with roller gear in the nearshore area and on the continental shelf and allow only the use of midwater trawl on the continental shelf where most overfished species occur. Small footrope bottom trawling is permitted in the nearshore area. The concepts behind these trawl gear restrictions were first developed for the 2000 fishery by a group of industry participants who met with the GMT to develop measures that would achieve conservation goals while minimizing effects of the restrictions on the industry and coastal communities.

Allowable commercial catches of many groundfish remain low in 2003, but the Council has tried to structure the area closures to provide commercial fisheries with greater flexibility in their fishing patterns while not increasing the overall catches. For example, the offshore boundary of the trawl RCA is modified in January-February and in November-December to allow directed fishing for petrale sole in areas where and times when petrale sole are known to aggregate and to co-occur with fewer overfished stocks. New depth based closures are intended to allow fisheries access to more abundant stocks in the offshore and inshore open areas, thereby limiting the extent to which fishers and related firms would be driven out of business. Many commercial groundfish fishers have other fishing opportunities during the year, and these opportunities were taken into account. For example, the small-scale commercial fishers (and recreational fishers) in southern California would (under State regulations) still be able to fish for certain species in nearshore waters while the continental shelf is closed to protect overfished species.

Nonetheless, the effects of these 2003 management measures on some fishers and communities will be severe, particularly for those without other opportunities. For the 2003 fishery, the Council proposed stringent harvest levels intended to protect and rebuild overfished and depleted stocks. In addition to constraining OYs for overfished stocks, the Council also severely restricted harvest on more abundant stocks associated with overfished stocks. These measures were needed to ensure that rebuilding of overfished and depleted stocks could occur. However, they will cause serious socio-economic repercussions as a result of these lower harvest levels and the consequent lower landings limits.

Distribution of the economic effect of the 2003 management measures will depend on how well fishers can adapt to the restrictions. Some user groups, particularly those able to use midwater trawl gear, will have a greater opportunity to harvest than they would have had without gear restrictions, because proposed restrictions allow fishers to use gear with lower incidental catch of the depleted rockfish. Other fishers will not be able to maintain a viable operation at the reduced harvest levels. The Council prepared an EIS for this action, which includes a discussion of the economic and social effects of these management measures on coastal communities (see **ADDRESSES**).

Trip Limit Tables and Management Measures

Cumulative trip limits are set into tables, with explanations in section IV. For 2003, NMFS has separated tables for each fishing sector into northern and southern area tables. The industry is cautioned not to rely on the tables alone. The text in Section IV. provides cumulative trip limit definitions and periods, size limit definitions and conversions, and other information that cannot be readily included in a table but must be understood in order to correctly use the tables. For the first time in 2003, gear regulations and reference coordinates are being proposed as a regulatory amendment to the regulations at 50 CFR part 660. Historically, NMFS has published these regulatory measures as annual specifications. The sablefish allocations and nontrawl sablefish management, Pacific whiting allocations and seasons, and "per trip" limits for black rockfish off Washington State are still presented in text in paragraphs IV.B. Trip limits for exempted trawl gear in the open access fishery (Table 5 and paragraph IV.C.), recreational management measures (paragraph IV.D.), and tribal allocations and management measures (paragraph V.) still remain in the text.

Cumulative trip limits are applied during the time periods and in the areas indicated in Tables 3–5 of Section IV. The cumulative trip limit may be taken at any time within the applicable cumulative trip limit period. All cumulative trip limit periods start at 0001 hours, local time, on the specified beginning date.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 2003, including measures that are unchanged from 2002 and new measures.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2002 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained,

possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2–month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead*. Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated at 50 CFR 660.302 (in the definition of ''landing''), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph IV.A.(7)). See paragraph IV.A.(9) for information on inseason changes to limits.

(3) *Weights*. All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages*. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish*. ''Legal fish'' means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement*. Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the ''total length,'' which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the State where the fish will be landed.

(a) *Whole fish*. For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *''Headed'' fish*. For a fish with the head removed (''headed''), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets*. A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph IV. D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions*. The following conversions apply to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size for headed sablefish, which corresponds to 20 inches (51 cm) total length for whole fish, is 14 inches (36 cm).

(ii) The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the State conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

(e) *Lingcod size and weight conversions*. The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion*. For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion*. The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The States' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that State's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted*. The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on*. The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure*. ''Closure,'' when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph IV.A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the CCA at IV. A.(19).

(8) *Fishery management area*. The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures*. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting see 50 CFR 660.323(b). Council meetings in 2002 will be held in the months of

March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits*. It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries*. The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits*. Trip limits for a species or a species group may differ in different geographic areas along the coast. The following ''crossover'' provisions apply to vessels operating in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2002, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph IV.A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area*. If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area*. If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Operating in two different areas where a species or species group is managed with different types of trip limits*. During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(d) *Minor rockfish*. Several rockfish species are designated with species-specific limits on one side of the 40°10 N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 38° N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 38° N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 38° N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(iii) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups. [Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.]

(e) ''DTS complex.'' For 2003, there are differential trip limits for the ''DTS complex'' (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the four species in the ''DTS complex.''

(f) *Flatfish complex*. For 2003, there are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the species in the flatfish complex.

(13) *Sorting*. It is unlawful for any person to ''fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied.'' This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h).) The following species must be sorted in 2003:

(a) For vessels with a limited entry permit:

(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish,

shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and Pacific whiting [Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.]

(ii) North of 40°10′ N. lat. - POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat. - black rockfish, blue rockfish, Pacific ocean perch, yellowtail rockfish;

(iii) South of 40°10′ N. lat.- minor shall nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception—thornyheads.

(14) *Limited Entry Trawl Gear Restrictions*. Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear. No more than one type of trawl gear may be on board during any single fishing trip.

(a) *Types of trawl gear*—Large footrope, small footrope, and midwater or pelagic trawl gears are defined at 50 CFR 660.302 and 660.322(b).

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large footrope trawl*. If Table 3 does not provide a large footrope trawl cumulative or trip limit for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group if large footrope gear is on board. It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. It is unlawful for any vessel using large footrope gear or that has large footrope trawl gear on board to fish for groundfish shoreward of the RCAs defined at paragraph (19) of this section. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board.

(ii) *Small footrope or midwater trawl gear*. Cumulative trip limits for canary rockfish, chilipepper rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, as indicated in Table 3 to section IV, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs IV.A.(14).

(iii) *Midwater trawl gear*. Higher yellowtail and widow rockfish cumulative trip limits are available for limited entry vessels using midwater trawl gear. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board; trawl gear and non-trawl gear on board*. The cumulative trip limits in Table 3 of Section IV must not be exceeded. For the first time in 2003, it is prohibited to have more than one type of trawl gear on board. It is prohibited to have more than one type of limited entry trawl gear on board and it is prohibited to have both limited entry trawl gear and exempted trawl gear on board. It is also prohibited to have both trawl gear and non-trawl (limited entry or open access) gear on board at the same time.

(c) *State landing receipts*. Washington, Oregon, and California will require the type of trawl gear on board to be recorded on the State landing receipt(s) for each trip or on an attachment to the State landing receipt.

(d) *Gear inspection*. All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Platooning—limited entry trawl vessels*. Limited entry trawl vessels are automatically in the ‘‘A’’ platoon, unless the ‘‘B’’ platoon is indicated on the limited entry permit. If a vessel is in the ‘‘A’’ platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. No more than one trawl permit may be registered to a vessel unless a permit is endorsed for both trawl and either longline or pot gear and is being stacked under § 660.335(c) for use in the limited entry fixed gear primary sablefish fishery. If a vessel is registered for use with more than one permit with a trawl endorsement through the fixed gear permit stacking program, then the vessel owner must designate one trawl-endorsed permit as his base trawl permit and may only fish in the platoon associated with that base trawl permit. If a limited entry trawl permit is authorized for the ‘‘B’’ platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the ‘‘A’’ platoon), unless otherwise specified.

(a) For a vessel in the ‘‘B’’ platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the ‘‘A’’ platoon will be effective on January 16, 2003, for the ‘‘B’’ platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the ‘‘B’’ platoon, unless otherwise specified.

(b) A vessel authorized to operate in the ‘‘B’’ platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the ‘‘B’’ platoon will have the same cumulative trip limits for the November 16, 2003, through December 31, 2003, period as a vessel operating in the ‘‘A’’ platoon has for the November 1, 2002, through December 31, 2002 period.

(16) *Permit transfers*. Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2003 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the ‘‘B’’ platoon.

(17) *Exempted fisheries*. U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(18) *Application of requirements*. Paragraphs IV.B. and IV.C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in Section V. The provisions in paragraphs IV.B. and IV.C. that are not covered under the headings ''limited entry'' or ''open access'' apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.D. pertains to the recreational fishery.

(19) *Rockfish Conservation Areas*. For 2003, the Council has introduced several RCAs and a YRCA and has retained the CCAs used in 2001 and 2002. Collectively, any geographically defined area where specific fishing activities are prohibited (closed) or otherwise restricted intended to protect a particular groundfish species or species group or intended to protect a complex of species is referred to as a Groundfish Conservation Area. The YRCA, the CCAs, and the larger depth-based RCAs are Groundfish Conservation Areas. Larger RCAs intended to protect a complex of species, such as overfished shelf rockfish species, have boundaries defined by a series of coordinates intended to approximate particular depth contours, such as 100 fm (183 m), 150 fm (274 m), 250 fm (457,) etc. Different gear types or fishing sectors may have RCAs with differing boundaries.

(a) *Yelloweye Rockfish Conservation Area*. The coordinates of the YRCA are defined at § 660.304(d). Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA.

(b) *Cowcod Conservation Areas*. The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20–fathoms (36.9–m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20–fathom (36.9–m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30″ N. lat., and bounded on the south by the latitude line at 32°59′30'' N. lat.

(c) *Limited entry trawl groundfish coastwide and open access exempted trawl south of 40°10′ N. lat. Conservation Area.*

(i) The trawl RCA is closed to limited entry groundfish trawl fishing coastwide and to open access exempted trawl fishing (except for pink shrimp trawling) south of 40°10′ N. lat. Fishing with limited entry groundfish trawl gear is prohibited within the trawl RCA north of 40°10′ N. lat. and fishing with any trawl gear is prohibited within the trawl RCA south of 40°10′ N. lat., unless that vessel is trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl gear in the trawl RCA. South of 40°10′ N. lat., it is unlawful to take and retain, possess, or land any species of fish taken with any type of trawl gear in the trawl RCA. Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for Pacific whiting or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting caught with midwater trawl gear or to taking and retaining yellowtail or widow rockfish with midwater trawl gear when trip limits are authorized for those species (November-December 2003.) If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside of the RCA. Nothing in these Federal regulations supercede any State regulations that may prohibit trawling shoreward of the 3 nm State waters boundary line.

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) in January through June and October through December, and approximating 75 fm (137 m) in July and August. Between 40°10′ N. lat. and 34°27′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 50 fm (91 m) in January and February and 60 fm (110 m) in March through December. Between 34°27′ N. lat. and the U.S. border with Mexico, along the mainland coast of California, the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) throughout the year. Between 34°27′ N. lat. and the U.S. border with Mexico, adjacent to the islands offshore of California, the trawl RCA is defined along an inshore boundary approximating 20 fm (37 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 38° N. lat., the trawl RCA is defined along a western, offshore boundary approximating 250 fm (457 m) in March through October, and approximating 250 fm (457 m) with some modifications to provide open areas to allow winter petrale sole fishing in January, February, November, and December. Between 38° N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(d) Non-Trawl (Limited Entry Fixed Gear and Open Access Nontrawl Gears) Groundfish Conservation Area.

(i) The non-trawl RCA is closed to non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, pot or trap, gillnet, set net, trammel net and spear) fishing for groundfish. Fishing with non-trawl gear is prohibited within the non-trawl gear RCA. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear in the non-trawl gear RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl gear RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear. If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.

(ii) Between the U.S. border with Canada and 46°16′ N. lat., the non-trawl gear RCA extends to the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 27 fm (49 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 20 fm

(37 m) throughout the year, except as provided for between Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.) Between a line drawn due south from Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and a line drawn due west from the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.,) vessels fishing with hook-and-line and/ or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 40°10′ N. lat., the non-trawl gear RCA is defined along a western, offshore boundary approximating 100 fm (183 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(e) *RCA Boundary Coordinates*. Coordinates for the specific boundaries that approximate the depth contours selected for both trawl and non-trawl gear RCAs are provided here.

(i) The 27–fm (49–m) depth contour used between 46°16′ N. lat. and 40°10′ N. lat. as an eastern boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°12.39′ W. long.;

(2) 46°14.85′ N. lat., 124°12.39′ W. long.;

(3) 46°3.95′ N. lat., 124°3.64′ W. long.;

(4) 45°43.14′ N. lat., 124°0.17′ W. long.;

(5) 45°23.33′ N. lat., 124°1.99′ W. long.;

(6) 45°9.54′ N. lat., 124°1.65′ W. long.;

(7) 44°39.99′ N. lat., 124°8.67′ W. long.;

(8) 44°20.86′ N. lat., 124°10.31′ W. long.;

(9) 43°37.11′ N. lat., 124°14.91′ W. long.;

(10) 43°27.54′ N. lat., 124°18.98′ W. long.;

(11) 43°20.68′ N. lat., 124°25.53′ W. long.;

(12) 43°15.08′ N. lat., 124°27.17′ W. long.;

(13) 43°6.89′ N. lat., 124°29.65′ W. long.;

(14) 43°1.02′ N. lat., 124°29.70′ W. long.;

(15) 42°52.67′ N. lat., 124°36.10′ W. long.;

(16) 42°45.96′ N. lat., 124°37.95′ W. long.;

(17) 42°45.80′ N. lat., 124°35.41′ W. long.;

(18) 42°38.46′ N. lat., 124°27.49′ W. long.;

(19) 42°35.29′ N. lat., 124°26.85′ W. long.;

(20) 42°31.49′ N. lat., 124°31.40′ W. long.;

(21) 42°29.06′ N. lat., 124°32.24′ W. long.;

(22) 42°14.26′ N. lat., 124°26.27′ W. long.;

(23) 42°4.86′ N. lat., 124°21.94′ W. long.;

(24) 42°0.10′ N. lat., 124°20.99′ W. long.;

(25) 42°0.00′ N. lat., 124°21.03′ W. long.;

(26) 41°56.33′ N. lat., 124°20.34′ W. long.;

(27) 41°50.93′ N. lat., 124°23.74′ W. long.;

(28) 41°41.83′ N. lat., 124°16.99′ W. long.;

(29) 41°35.48′ N. lat., 124°16.35′ W. long.;

(30) 41°23.51′ N. lat., 124°10.48′ W. long.;

(31) 41°4.62′ N. lat., 124°14.44′ W. long.;

(32) 40°54.28′ N. lat., 124°13.90′ W. long.;

(33) 40°40.37′ N. lat., 124°26.21′ W. long.;

(34) 40°34.03′ N. lat., 124°27.36′ W. long.;

(35) 40°28.88′ N. lat., 124°32.41′ W. long.;

(36) 40°24.82′ N. lat., 124°29.56′ W. long.;

(37) 40°22.64′ N. lat., 124°24.05′ W. long.;

(38) 40°18.67′ N. lat., 124°21.90′ W. long.;

(39) 40°14.23′ N. lat., 124°23.72′ W. long.; and

(40) 40°10.00′ N. lat., 124°17.22′ W. long.;

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.58′ N. lat., 125°42.47′ W. long.;

(2) 48°20.26′ N. lat., 125°23.03′ W. long.;

(3) 48°23.00′ N. lat., 124°50.00′ W. long.;

(4) 48°17.10′ N. lat., 124°54.82′ W. long.;

(5) 48°05.10′ N. lat., 124°59.40′ W. long.;

(6) 48°04.98′ N. lat., 125°10.02′ W. long.;

(7) 47°54.00′ N. lat., 125°04.98′ W. long.;

(8) 47°44.52′ N. lat., 125°00.00′ W. long.;

(9) 47°42.00′ N. lat., 124°58.98′ W. long.;

(10) 47°35.52′ N. lat., 124°55.50′ W. long.;

(11) 47°22.02′ N. lat., 124°44.40′ W. long.;

(12) 47°16.98′ N. lat., 124°45.48′ W. long.;

(13) 47°10.98′ N. lat., 124°48.48′ W. long.;

(14) 47°04.98′ N. lat., 124°49.02′ W. long.;

(15) 46°57.98′ N. lat., 124°46.50′ W. long.;

(16) 46°54.00′ N. lat., 124°45.00′ W. long.;

(17) 46°48.48′ N. lat., 124°44.52′ W. long.;

(18) 46°40.02′ N. lat., 124°36.00′ W. long.;

(19) 46°34.09′ N. lat., 124°27.03′ W. long.;

(20) 46°24.64′ N. lat., 124°30.33′ W. long.;

(21) 46°19.98′ N. lat., 124°36.00′ W. long.;

(22) 46°18.14′ N. lat., 124°34.26′ W. long.;

(23) 46°18.72′ N. lat., 124°22.68′ W. long.;

(24) 46°14.64′ N. lat., 124°22.54′ W. long.;

(25) 46°11.08′ N. lat., 124°30.74′ W. long.;

(26) 46°4.28′ N. lat., 124°31.49′ W. long.;

(27) 45°55.97′ N. lat., 124°19.95′ W. long.;

(28) 45°44.97′ N. lat., 124°15.96′ W. long.;

(29) 45°43.14′ N. lat., 124°21.86′ W. long.;

(30) 45°34.44′ N. lat., 124°14.44′ W. long.;

(31) 45°15.49′ N. lat., 124°11.49′ W. long.;

(32) 44°57.31′ N. lat., 124°15.03′ W. long.;

(33) 44°43.90′ N. lat., 124°28.88′ W. long.;

(34) 44°28.64′ N. lat., 124°35.67′ W. long.;

(35) 44°25.31′ N. lat., 124°43.08′ W. long.;

(36) 44°17.15′ N. lat., 124°47.98′ W. long.;

(37) 44°13.67′ N. lat., 124°54.41′ W. long.;

(38) 43°56.85′ N. lat., 124°55.32′ W. long.;

(39) 43°57.50′ N. lat., 124°41.23′ W. long.;

(40) 44°1.79′ N. lat., 124°38.00′ W. long.;

(41) 44°2.16′ N. lat., 124°32.62′ W. long.;

(42) 43°58.15′ N. lat., 124°30.39′ W. long.;

(43) 43°53.25′ N. lat., 124°31.39′ W. long.;

(44) 43°35.56′ N. lat., 124°28.17′ W. long.;
(45) 43°21.84′ N. lat., 124°36.07′ W. long.;
(46) 43°19.73′ N. lat., 124°34.86′ W. long.;
(47) 43°9.38′ N. lat., 124°39.30′ W. long.;
(48) 43°7.11′ N. lat., 124°37.66′ W. long.;
(49) 42°56.27′ N. lat., 124°43.29′ W. long.;
(50) 42°45.00′ N. lat., 124°41.50′ W. long.;
(51) 42°39.72′ N. lat., 124°39.11′ W. long.;
(52) 42°32.88′ N. lat., 124°40.13′ W. long.;
(53) 42°32.30′ N. lat., 124°39.04′ W. long.;
(54) 42°26.96′ N. lat., 124°44.31′ W. long.;
(55) 42°24.11′ N. lat., 124°42.16′ W. long.;
(56) 42°21.10′ N. lat., 124°35.46′ W. long.;
(57) 42°14.72′ N. lat., 124°32.30′ W. long.;
(58) 42°9.24′ N. lat., 124°32.04′ W. long.;
(59) 42°1.89′ N. lat., 124°32.70′ W. long.;
(60) 42°0.03′ N. lat., 124°32.02′ W. long.;
(61) 42°0.00′ N. lat., 124°32.02′ W. long.;
(62) 41°46.18′ N. lat., 124°26.60′ W. long.;
(63) 41°29.22′ N. lat., 124°28.04′ W. long.;
(64) 41°9.62′ N. lat., 124°19.75′ W. long.;
(65) 40°50.71′ N. lat., 124°23.80′ W. long.;
(66) 40°43.35′ N. lat., 124°29.30′ W. long.;
(67) 40°40.24′ N. lat., 124°29.86′ W. long.;
(68) 40°37.50′ N. lat., 124°28.68′ W. long.;
(69) 40°34.42′ N. lat., 124°29.65′ W. long.;
(70) 40°34.74′ N. lat., 124°34.61′ W. long.;
(71) 40°31.70′ N. lat., 124°37.13′ W. long.;
(72) 40°25.03′ N. lat., 124°34.77′ W. long.;
(73) 40°23.58′ N. lat., 124°31.49′ W. long.;
(74) 40°23.64′ N. lat., 124°28.35′ W. long.;
(75) 40°22.53′ N. lat., 124°24.76′ W. long.;
(76) 40°21.46′ N. lat., 124°24.86′ W. long.;
(77) 40°21.74′ N. lat., 124°27.63′ W. long.;
(78) 40°19.76′ N. lat., 124°28.15′ W. long.;
(79) 40°18.00′ N. lat., 124°25.38′ W. long.;
(80) 40°18.54′ N. lat., 124°22.94′ W. long.;
(81) 40°15.55′ N. lat., 124°25.75′ W. long.;
(82) 40°16.06′ N. lat., 124°30.48′ W. long.;
(83) 40°15.75′ N. lat., 124°31.69′ W. long.; and
(84) 40°10.00′ N. lat., 124°21.28′ W. long.

(iii) The 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.08′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.98′ N. lat., 125°13.24′ W. long.;
(22) 48°22.95′ N. lat., 125°10.79′ W. long.;
(23) 48°21.61′ N. lat., 125°02.54′ W. long.;
(24) 48°23.00′ N. lat., 124°49.34′ W. long.;
(25) 48°17.00′ N. lat., 124°56.50′ W. long.;
(26) 48°06.00′ N. lat., 125°00.00′ W. long.;
(27) 48°04.62′ N. lat., 125°01.73′ W. long.;
(28) 48°04.84′ N. lat., 125°04.03′ W. long.;
(29) 48°06.41′ N. lat., 125°06.51′ W. long.;
(30) 48°06.00′ N. lat., 125°08.00′ W. long.;
(31) 48°07.28′ N. lat., 125°11.14′ W. long.;
(32) 48°03.45′ N. lat., 125°16.66′ W. long.;
(33) 47°59.50′ N. lat., 125°18.88′ W. long.;
(34) 47°58.68′ N. lat., 125°16.19′ W. long.;
(35) 47°56.62′ N. lat., 125°13.50′ W. long.;
(36) 47°53.71′ N. lat., 125°11.96′ W. long.;
(37) 47°51.70′ N. lat., 125°09.38′ W. long.;
(38) 47°49.95′ N. lat., 125°06.07′ W. long.;
(39) 47°49.00′ N. lat., 125°03.00′ W. long.;
(40) 47°46.95′ N. lat., 125°04.00′ W. long.;
(41) 47°46.58′ N. lat., 125°03.15′ W. long.;
(42) 47°44.07′ N. lat., 125°04.28′ W. long.;
(43) 47°43.32′ N. lat., 125°04.41′ W. long.;
(44) 47°40.95′ N. lat., 125°04.14′ W. long.;
(45) 47°39.58′ N. lat., 125°04.97′ W. long.;
(46) 47°36.23′ N. lat., 125°02.77′ W. long.;
(47) 47°34.28′ N. lat., 124°58.66′ W. long.;
(48) 47°32.17′ N. lat., 124°57.77′ W. long.;
(49) 47°30.27′ N. lat., 124°56.16′ W. long.;
(50) 47°30.60′ N. lat., 124°54.80′ W. long.;
(51) 47°29.26′ N. lat., 124°52.21′ W. long.;
(52) 47°28.21′ N. lat., 124°50.65′ W. long.;
(53) 47°27.38′ N. lat., 124°49.34′ W. long.;
(54) 47°25.61′ N. lat., 124°48.26′ W. long.;
(55) 47°23.54′ N. lat., 124°46.42′ W. long.;
(56) 47°20.64′ N. lat., 124°45.91′ W. long.;
(57) 47°17.99′ N. lat., 124°45.59′ W. long.;
(58) 47°18.20′ N. lat., 124°49.12′ W. long.;
(59) 47°15.01′ N. lat., 124°51.09′ W. long.;
(60) 47°12.61′ N. lat., 124°54.89′ W. long.;

(61) 47°08.22′ N. lat., 124°56.53′ W. long.;
(62) 47°08.50′ N. lat., 124°54.95′ W. long.;
(63) 47°01.92′ N. lat., 124°57.74′ W. long.;
(64) 47°01.14′ N. lat., 124°59.35′ W. long.;
(65) 46°58.48′ N. lat., 124°57.81′ W. long.;
(66) 46°56.79′ N. lat., 124°56.03′ W. long.;
(67) 46°58.01′ N. lat., 124°55.09′ W. long.;
(68) 46°55.07′ N. lat., 124°54.14′ W. long.;
(69) 46°59.60′ N. lat., 124°49.79′ W. long.;
(70) 46°58.72′ N. lat., 124°48.78′ W. long.;
(71) 46°54.45′ N. lat., 124°48.36′ W. long.;
(72) 46°53.99′ N. lat., 124°49.95′ W. long.;
(73) 46°54.38′ N. lat., 124°52.73′ W. long.;
(74) 46°52.38′ N. lat., 124°52.02′ W. long.;
(75) 46°48.93′ N. lat., 124°49.17′ W. long.;
(76) 46°41.50′ N. lat., 124°43.00′ W. long.;
(77) 46°34.50′ N. lat., 124°28.50′ W. long.;
(78) 46°29.00′ N. lat., 124°30.00′ W. long.;
(79) 46°20.00′ N. lat., 124°36.50′ W. long.;
(80) 46°18.00′ N. lat., 124°38.00′ W. long.;
(81) 46°17.00′ N. lat., 124°35.50′ W. long.;
(82) 46°17.00′ N. lat., 124°22.50′ W. long.;
(83) 46°15.02′ N. lat., 124°23.77′ W. long.;
(84) 46°12.00′ N. lat., 124°35.00′ W. long.;
(85) 46°10.50′ N. lat., 124°39.00′ W. long.;
(86) 46°8.90′ N. lat., 124°39.11′ W. long.;
(87) 46°0.97′ N. lat., 124°38.56′ W. long.;
(88) 45°57.04′ N. lat., 124°36.42′ W. long.;
(89) 45°54.29′ N. lat., 124°40.02′ W. long.;
(90) 45°47.19′ N. lat., 124°35.58′ W. long.;
(91) 45°41.75′ N. lat., 124°28.32′ W. long.;
(92) 45°34.16′ N. lat., 124°24.23′ W. long.;
(93) 45°27.10′ N. lat., 124°21.74′ W. long.;
(94) 45°17.14′ N. lat., 124°17.85′ W. long.;
(95) 44°59.51′ N. lat., 124°19.34′ W. long.;
(96) 44°49.30′ N. lat., 124°29.97′ W. long.;
(97) 44°45.64′ N. lat., 124°33.89′ W. long.;
(98) 44°33.00′ N. lat., 124°36.88′ W. long.;
(99) 44°28.20′ N. lat., 124°44.72′ W. long.;
(100) 44°13.16′ N. lat., 124°56.36′ W. long.;
(101) 43°56.34′ N. lat., 124°55.74′ W. long.;
(102) 43°56.47′ N. lat., 124°34.61′ W. long.;
(103) 43°42.73′ N. lat., 124°32.41′ W. long.;
(104) 43°30.92′ N. lat., 124°34.43′ W. long.;
(105) 43°17.44′ N. lat., 124°41.16′ W. long.;
(106) 43°7.04′ N. lat., 124°41.25′ W. long.;
(107) 43°3.45′ N. lat., 124°44.36′ W. long.;
(108) 43°3.90′ N. lat., 124°50.81′ W. long.;
(109) 42°55.70′ N. lat., 124°52.79′ W. long.;
(110) 42°54.12′ N. lat., 124°47.36′ W. long.;
(111) 42°43.99′ N. lat., 124°42.38′ W. long.;
(112) 42°38.23′ N. lat., 124°41.25′ W. long.;
(113) 42°33.02′ N. lat., 124°42.38′ W. long.;
(114) 42°31.89′ N. lat., 124°42.04′ W. long.;
(115) 42°30.08′ N. lat., 124°42.67′ W. long.;
(116) 42°28.27′ N. lat., 124°47.08′ W. long.;
(117) 42°25.22′ N. lat., 124°43.51′ W. long.;
(118) 42°19.22′ N. lat., 124°37.92′ W. long.;
(119) 42°16.28′ N. lat., 124°36.11′ W. long.;
(120) 42°5.65′ N. lat., 124°34.92′ W. long.;
(121) 42°0.00′ N. lat., 124°35.27′ W. long.;
(122) 42°00.00′ N. lat., 124°35.26′ W. long.;
(123) 41°47.04′ N. lat., 124°27.64′ W. long.;
(124) 41°32.92′ N. lat., 124°28.79′ W. long.;
(125) 41°24.17′ N. lat., 124°28.46′ W. long.;
(126) 41°10.12′ N. lat., 124°20.50′ W. long.;
(127) 40°51.41′ N. lat., 124°24.38′ W. long.;
(128) 40°43.71′ N. lat., 124°29.89′ W. long.;
(129) 40°40.14′ N. lat., 124°30.90′ W. long.;
(130) 40°37.35′ N. lat., 124°29.05′ W. long.;
(131) 40°34.76′ N. lat., 124°29.82′ W. long.;
(132) 40°36.78′ N. lat., 124°37.06′ W. long.;
(133) 40°32.44′ N. lat., 124°39.58′ W. long.;
(134) 40°24.82′ N. lat., 124°35.12′ W. long.;
(135) 40°23.30′ N. lat., 124°31.60′ W. long.;
(136) 40°23.52′ N. lat., 124°28.78′ W. long.;
(137) 40°22.43′ N. lat., 124°25.00′ W. long.;
(138) 40°21.72′ N. lat., 124°24.94′ W. long.;
(139) 40°21.87′ N. lat., 124°27.96′ W. long.;
(140) 40°21.40′ N. lat., 124°28.74′ W. long.;
(141) 40°19.68′ N. lat., 124°28.49′ W. long.;
(142) 40°17.73′ N. lat., 124°25.43′ W. long.;
(143) 40°18.37′ N. lat., 124°23.35′ W. long.;
(144) 40°15.75′ N. lat., 124°26.05′ W. long.;
(145) 40°16.75′ N. lat., 124°33.71′ W. long.;
(146) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(147) 40°10.00′ N. lat., 124°21.12′ W. long.

(iv) The 250–fm (457–m) depth contour used north of 38° N. lat. for March through October as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.68′ N. lat., 125°42.10′ W. long.;
(2) 48°12.83′ N. lat., 125°39.71′ W. long.;
(3) 48°13.00′ N. lat., 125°39.00′ W. long.;
(4) 48°12.73′ N. lat., 125°38.87′ W. long.;
(5) 48°12.43′ N. lat., 125°39.12′ W. long.;
(6) 48°11.83′ N. lat., 125°40.01′ W. long.;
(7) 48°11.78′ N. lat., 125°41.70′ W. long.;
(8) 48°10.62′ N. lat., 125°43.41′ W. long.;
(9) 48°09.23′ N. lat., 125°42.80′ W. long.;
(10) 48°08.79′ N. lat., 125°43.79′ W. long.;
(11) 48°08.50′ N. lat., 125°45.00′ W. long.;
(12) 48°07.43′ N. lat., 125°46.36′ W. long.;
(13) 48°06.00′ N. lat., 125°46.50′ W. long.;
(14) 48°05.38′ N. lat., 125°42.82′ W. long.;
(15) 48°04.19′ N. lat., 125°40.40′ W. long.;

(16) 48°03.50′ N. lat., 125°37.00′ W. long.;
(17) 48°01.50′ N. lat., 125°40.00′ W. long.;
(18) 47°57.00′ N. lat., 125°37.00′ W. long.;
(19) 47°55.21′ N. lat., 125°37.22′ W. long.;
(20) 47°54.02′ N. lat., 125°36.57′ W. long.;
(21) 47°53.67′ N. lat., 125°35.06′ W. long.;
(22) 47°54.14′ N. lat., 125°32.35′ W. long.;
(23) 47°55.50′ N. lat., 125°28.56′ W. long.;
(24) 47°57.03′ N. lat., 125°26.52′ W. long.;
(25) 47°57.98′ N. lat., 125°25.08′ W. long.;
(26) 48°00.54′ N. lat., 125°24.38′ W. long.;
(27) 48°01.45′ N. lat., 125°23.70′ W. long.;
(28) 48°01.97′ N. lat., 125°22.34′ W. long.;
(29) 48°03.68′ N. lat., 125°21.20′ W. long.;
(30) 48°01.96′ N. lat., 125°19.56′ W. long.;
(31) 48°00.98′ N. lat., 125°20.43′ W. long.;
(32) 48°00.00′ N. lat., 125°20.68′ W. long.;
(33) 47°58.00′ N. lat., 125°20.00′ W. long.;
(34) 47°57.65′ N. lat., 125°19.18′ W. long.;
(35) 47°58.00′ N. lat., 125°18.00′ W. long.;
(36) 47°56.59′ N. lat., 125°18.15′ W. long.;
(37) 47°51.30′ N. lat., 125°18.32′ W. long.;
(38) 47°49.88′ N. lat., 125°14.49′ W. long.;
(39) 47°49.00′ N. lat., 125°11.00′ W. long.;
(40) 47°47.99′ N. lat., 125°07.31′ W. long.;
(41) 47°46.47′ N. lat., 125°08.63′ W. long.;
(42) 47°46.00′ N. lat., 125°06.00′ W. long.;
(43) 47°44.50′ N. lat., 125°07.50′ W. long.;
(44) 47°43.39′ N. lat., 125°06.57′ W. long.;
(45) 47°42.37′ N. lat., 125°05.74′ W. long.;
(46) 47°40.61′ N. lat., 125°06.48′ W. long.;
(47) 47°37.43′ N. lat., 125°07.33′ W. long.;
(48) 47°33.68′ N. lat., 125°04.80′ W. long.;
(49) 47°30.00′ N. lat., 125°00.00′ W. long.;
(50) 47°28.00′ N. lat., 124°58.50′ W. long.;
(51) 47°28.88′ N. lat., 124°54.71′ W. long.;
(52) 47°27.70′ N. lat., 124°51.87′ W. long.;
(53) 47°24.84′ N. lat., 124°48.45′ W. long.;
(54) 47°21.76′ N. lat., 124°47.42′ W. long.;
(55) 47°18.84′ N. lat., 124°46.75′ W. long.;
(56) 47°19.82′ N. lat., 124°51.43′ W. long.;
(57) 47°18.13′ N. lat., 124°54.25′ W. long.;
(58) 47°13.50′ N. lat., 124°54.69′ W. long.;
(59) 47°15.00′ N. lat., 125°00.00′ W. long.;
(60) 47°08.00′ N. lat., 124°59.83′ W. long.;
(61) 47°05.79′ N. lat., 125°01.00′ W. long.;
(62) 47°03.34′ N. lat., 124°57.49′ W. long.;
(63) 47°01.00′ N. lat., 125°00.00′ W. long.;
(64) 46°55.00′ N. lat., 125°02.00′ W. long.;
(65) 46°51.00′ N. lat., 124°57.00′ W. long.;
(66) 46°47.00′ N. lat., 124°55.00′ W. long.;
(67) 46°34.00′ N. lat., 124°38.00′ W. long.;
(68) 46°30.50′ N. lat., 124°41.00′ W. long.;
(69) 46°33.00′ N. lat., 124°32.00′ W. long.;
(70) 46°29.00′ N. lat., 124°32.00′ W. long.;
(71) 46°20.00′ N. lat., 124°39.00′ W. long.;
(72) 46°18.16′ N. lat., 124°40.00′ W. long.;
(73) 46°15.83′ N. lat., 124°27.01′ W. long.;
(74) 46°15.00′ N. lat., 124°30.96′ W. long.;
(75) 46°13.17′ N. lat., 124°37.87′ W. long.;
(76) 46°13.17′ N. lat., 124°38.75′ W. long.;
(77) 46°10.50′ N. lat., 124°42.00′ W. long.;
(78) 46°6.21′ N. lat., 124°41.85′ W. long.;
(79) 46°3.02′ N. lat., 124°50.27′ W. long.;
(80) 45°57.00′ N. lat., 124°45.52′ W. long.;
(81) 45°46.85′ N. lat., 124°45.91′ W. long.;
(82) 45°45.81′ N. lat., 124°47.05′ W. long.;
(83) 45°44.87′ N. lat., 124°45.98′ W. long.;
(84) 45°43.44′ N. lat., 124°46.03′ W. long.;
(85) 45°35.82′ N. lat., 124°45.72′ W. long.;
(86) 45°35.70′ N. lat., 124°42.89′ W. long.;
(87) 45°24.45′ N. lat., 124°38.21′ W. long.;
(88) 45°11.68′ N. lat., 124°39.38′ W. long.;
(89) 44°57.94′ N. lat., 124°37.02′ W. long.;
(90) 44°44.28′ N. lat., 124°50.79′ W. long.;
(91) 44°32.63′ N. lat., 124°54.21′ W. long.;
(92) 44°23.20′ N. lat., 124°49.87′ W. long.;
(93) 44°13.17′ N. lat., 124°58.81′ W. long.;
(94) 43°57.92′ N. lat., 124°58.29′ W. long.;
(95) 43°50.12′ N. lat., 124°53.36′ W. long.;
(96) 43°49.53′ N. lat., 124°43.96′ W. long.;
(97) 43°42.76′ N. lat., 124°41.40′ W. long.;
(98) 43°24.00′ N. lat., 124°42.61′ W. long.;
(99) 43°19.74′ N. lat., 124°45.12′ W. long.;
(100) 43°19.62′ N. lat., 124°52.95′ W. long.;
(101) 43°17.41′ N. lat., 124°53.02′ W. long.;
(102) 42°49.15′ N. lat., 124°54.93′ W. long.;
(103) 42°46.74′ N. lat., 124°53.39′ W. long.;
(104) 42°43.76′ N. lat., 124°51.64′ W. long.;
(105) 42°45.41′ N. lat., 124°49.35′ W. long.;
(106) 42°43.92′ N. lat., 124°45.92′ W. long.;
(107) 42°38.87′ N. lat., 124°43.38′ W. long.;
(108) 42°34.78′ N. lat., 124°46.56′ W. long.;
(109) 42°31.47′ N. lat., 124°46.89′ W. long.;
(110) 42°31.00′ N. lat., 124°44.28′ W. long.;
(111) 42°29.22′ N. lat., 124°46.93′ W. long.;
(112) 42°28.39′ N. lat., 124°49.94′ W. long.;
(113) 42°26.28′ N. lat., 124°47.60′ W. long.;
(114) 42°19.58′ N. lat., 124°43.21′ W. long.;
(115) 42°13.75′ N. lat., 124°40.06′ W. long.;
(116) 42°5.12′ N. lat., 124°39.06′ W. long.;
(117) 41°59.99′ N. lat., 124°37.72′ W. long.;
(118) 42°0.00′ N. lat., 124°37.76′ W. long.;
(119) 41°47.93′ N. lat., 124°31.79′ W. long.;
(120) 41°21.35′ N. lat., 124°30.35′ W. long.;

(121) 41°7.11′ N. lat., 124°25.25′ W. long.;
(122) 40°57.37′ N. lat., 124°30.25′ W. long.;
(123) 40°41.03′ N. lat., 124°33.21′ W. long.;
(124) 40°37.40′ N. lat., 124°38.96′ W. long.;
(125) 40°33.70′ N. lat., 124°42.50′ W. long.;
(126) 40°31.31′ N. lat., 124°41.59′ W. long.;
(127) 40°25.00′ N. lat., 124°36.65′ W. long.;
(128) 40°22.42′ N. lat., 124°32.19′ W. long.;
(129) 40°17.17′ N. lat., 124°32.21′ W. long.;
(130) 40°18.68′ N. lat., 124°50.44′ W. long.;
(131) 40°10.11′ N. lat., 124°28.25′ W. long.;
(132) 40°1.63′ N. lat., 124°17.25′ W. long.;
(133) 39°51.85′ N. lat., 124°10.33′ W. long.;
(134) 39°32.41′ N. lat., 124°0.01′ W. long.;
(135) 38°57.16′ N. lat., 124°1.89′ W. long.;
(136) 38°11.66′ N. lat., 123°30.87′ W. long.;
(137) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(138) 38°00.00′ N. lat., 123°28.84′ W. long.

(v) The 250–fm (457–m) depth contour modified to allow fishing for petrale in winter months of January, February, November, and December and used north of 38° N. lat. as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.71′ N. lat., 125°41.95′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;
(3) 48°08.50′ N. lat., 125°45.00′ W. long.;
(4) 48°06.00′ N. lat., 125°46.50′ W. long.;
(5) 48°03.50′ N. lat., 125°37.00′ W. long.;
(6) 48°01.50′ N. lat., 125°40.00′ W. long.;
(7) 47°57.00′ N. lat., 125°37.00′ W. long.;
(8) 47°55.50′ N. lat., 125°28.50′ W. long.;
(9) 47°58.00′ N. lat., 125°25.00′ W. long.;
(10) 48°00.50′ N. lat., 125°24.50′ W. long.;
(11) 48°03.50′ N. lat., 125°21.00′ W. long.;
(12) 48°02.00′ N. lat., 125°19.50′ W. long.;
(13) 48°00.00′ N. lat., 125°21.00′ W. long.;
(14) 47°58.00′ N. lat., 125°20.00′ W. long.;
(15) 47°58.00′ N. lat., 125°18.00′ W. long.;
(16) 47°52.00′ N. lat., 125°16.50′ W. long.;
(17) 47°49.00′ N. lat., 125°11.00′ W. long.;
(18) 47°46.00′ N. lat., 125°06.00′ W. long.;
(19) 47°44.50′ N. lat., 125°07.50′ W. long.;
(20) 47°42.00′ N. lat., 125°06.00′ W. long.;
(21) 47°38.00′ N. lat., 125°07.00′ W. long.;
(22) 47°30.00′ N. lat., 125°00.00′ W. long.;
(23) 47°28.00′ N. lat., 124°58.50′ W. long.;
(24) 47°28.88′ N. lat., 124°54.71′ W. long.;
(25) 47°27.70′ N. lat., 124°51.87′ W. long.;
(26) 47°24.84′ N. lat., 124°48.45′ W. long.;
(27) 47°21.76′ N. lat., 124°47.42′ W. long.;
(28) 47°18.84′ N. lat., 124°46.75′ W. long.;
(29) 47°19.82′ N. lat., 124°51.43′ W. long.;
(30) 47°18.13′ N. lat., 124°54.25′ W. long.;
(31) 47°13.50′ N. lat., 124°54.69′ W. long.;
(32) 47°15.00′ N. lat., 125°00.00′ W. long.;
(33) 47°08.00′ N. lat., 124°59.82′ W. long.;
(34) 47°05.79′ N. lat., 125°01.00′ W. long.;
(35) 47°03.34′ N. lat., 124°57.49′ W. long.;
(36) 47°01.00′ N. lat., 125°00.00′ W. long.;
(37) 46°55.00′ N. lat., 125°02.00′ W. long.;
(38) 46°51.00′ N. lat., 124°57.00′ W. long.;
(39) 46°47.00′ N. lat., 124°55.00′ W. long.;
(40) 46°34.00′ N. lat., 124°38.00′ W. long.;
(41) 46°30.50′ N. lat., 124°41.00′ W. long.;
(42) 46°33.00′ N. lat., 124°32.00′ W. long.;
(43) 46°29.00′ N. lat., 124°32.00′ W. long.;
(44) 46°20.00′ N. lat., 124°39.00′ W. long.;
(45) 46°18.16′ N. lat., 124°40.00′ W. long.;
(46) 46°15.83′ N. lat., 124°27.01′ W. long.;
(47) 46°15.00′ N. lat., 124°30.96′ W. long.;
(48) 46°13.17′ N. lat., 124°38.76′ W. long.;
(49) 46°10.51′ N. lat., 124°41.99′ W. long.;
(50) 46°6.24′ N. lat., 124°41.81′ W. long.;
(51) 46°3.04′ N. lat., 124°50.26′ W. long.;
(52) 45°56.99′ N. lat., 124°45.45′ W. long.;
(53) 45°49.94′ N. lat., 124°45.75′ W. long.;
(54) 45°49.94′ N. lat., 124°42.33′ W. long.;
(55) 45°45.73′ N. lat., 124°42.18′ W. long.;
(56) 45°45.73′ N. lat., 124°43.82′ W. long.;
(57) 45°41.94′ N. lat., 124°43.61′ W. long.;
(58) 45°41.58′ N. lat., 124°39.86′ W. long.;
(59) 45°38.45′ N. lat., 124°39.94′ W. long.;
(60) 45°35.75′ N. lat., 124°42.91′ W. long.;
(61) 45°24.49′ N. lat., 124°38.20′ W. long.;
(62) 45°14.43′ N. lat., 124°39.05′ W. long.;
(63) 45°14.30′ N. lat., 124°34.19′ W. long.;
(64) 45°8.98′ N. lat., 124°34.26′ W. long.;
(65) 45°9.02′ N. lat., 124°38.81′ W. long.;
(66) 44°57.98′ N. lat., 124°36.98′ W. long.;
(67) 44°56.62′ N. lat., 124°38.32′ W. long.;
(68) 44°50.82′ N. lat., 124°35.52′ W. long.;
(69) 44°46.89′ N. lat., 124°38.32′ W. long.;
(70) 44°50.78′ N. lat., 124°44.24′ W. long.;
(71) 44°44.27′ N. lat., 124°50.78′ W. long.;
(72) 44°32.63′ N. lat., 124°54.24′ W. long.;
(73) 44°23.25′ N. lat., 124°49.78′ W. long.;
(74) 44°13.16′ N. lat., 124°58.81′ W. long.;
(75) 43°57.88′ N. lat., 124°58.25′ W. long.;
(76) 43°56.89′ N. lat., 124°57.33′ W. long.;
(77) 43°53.41′ N. lat., 124°51.95′ W. long.;
(78) 43°51.56′ N. lat., 124°47.38′ W. long.;
(79) 43°51.49′ N. lat., 124°37.77′ W. long.;
(80) 43°48.02′ N. lat., 124°43.31′ W. long.;
(81) 43°42.77′ N. lat., 124°41.39′ W. long.;
(82) 43°24.09′ N. lat., 124°42.57′ W. long.;
(83) 43°19.73′ N. lat., 124°45.09′ W. long.;

(84) 43°15.98′ N. lat., 124°47.76′ W. long.;
(85) 43°4.14′ N. lat., 124°52.55′ W. long.;
(86) 43°4.00′ N. lat., 124°53.88′ W. long.;
(87) 42°54.69′ N. lat., 124°54.54′ W. long.;
(88) 42°45.46′ N. lat., 124°49.37′ W. long.;
(89) 42°43.91′ N. lat., 124°45.90′ W. long.;
(90) 42°38.84′ N. lat., 124°43.36′ W. long.;
(91) 42°34.82′ N. lat., 124°46.56′ W. long.;
(92) 42°31.57′ N. lat., 124°46.86′ W. long.;
(93) 42°30.98′ N. lat., 124°44.27′ W. long.;
(94) 42°29.21′ N. lat., 124°46.93′ W. long.;
(95) 42°28.52′ N. lat., 124°49.40′ W. long.;
(96) 42°26.06′ N. lat., 124°46.61′ W. long.;
(97) 42°21.82′ N. lat., 124°43.76′ W. long.;
(98) 42°17.47′ N. lat., 124°38.89′ W. long.;
(99) 42°13.67′ N. lat., 124°37.51′ W. long.;
(100) 42°13.76′ N. lat., 124°40.03′ W. long.;
(101) 42°5.12′ N. lat., 124°39.06′ W. long.;
(102) 42°2.67′ N. lat., 124°38.41′ W. long.;
(103) 42°2.67′ N. lat., 124°35.95′ W. long.;
(104) 42°0.00′ N. lat., 124°35.88′ W. long.;
(105) 41°59.99′ N. lat., 124°35.92′ W. long.;
(106) 41°56.38′ N. lat., 124°34.96′ W. long.;
(107) 41°53.98′ N. lat., 124°32.50′ W. long.;
(108) 41°50.69′ N. lat., 124°30.46′ W. long.;
(109) 41°48.30′ N. lat., 124°29.91′ W. long.;
(110) 41°47.93′ N. lat., 124°31.79′ W. long.;
(111) 41°21.35′ N. lat., 124°30.35′ W. long.;
(112) 41°7.11′ N. lat., 124°25.25′ W. long.;
(113) 40°57.37′ N. lat., 124°30.25′ W. long.;
(114) 40°41.03′ N. lat., 124°33.21′ W. long.;
(115) 40°37.40′ N. lat., 124°38.96′ W. long.;
(116) 40°33.70′ N. lat., 124°42.50′ W. long.;
(117) 40°31.31′ N. lat., 124°41.59′ W. long.;
(118) 40°25.00′ N. lat., 124°36.65′ W. long.;
(119) 40°22.42′ N. lat., 124°32.19′ W. long.;
(120) 40°17.17′ N. lat., 124°32.21′ W. long.;
(121) 40°18.68′ N. lat., 124°50.44′ W. long.;
(122) 40°10.11′ N. lat., 124°28.25′ W. long.;
(123) 40°1.63′ N. lat., 124°17.25′ W. long.;
(124) 39°51.85′ N. lat., 124°10.33′ W. long.;
(125) 39°32.41′ N. lat., 124°0.01′ W. long.;
(126) 38°57.16′ N. lat., 124°1.89′ W. long.;
(127) 38°11.66′ N. lat., 123°30.87′ W. long.;
(128) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(129) 38°00.00′ N. lat., 123°28.84′ W. long.

(vi) The 50–fm (91–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in the months of January and February is defined by straight lines connecting all of the following points in the order stated:
(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°14.58′ N. lat., 123°9.93′ W. long.;
(17) 38°1.86′ N. lat., 123°9.76′ W. long.;
(18) 37°53.66′ N. lat., 123°12.06′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(vii) The 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October is defined by straight lines connecting all of the following points in the order stated:
(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°8.32′ N. lat., 123°14.60′ W. long.;
(17) 38°0.27′ N. lat., 123°15.29′ W. long.;
(18) 37°56.93′ N. lat., 123°21.61′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;

(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(viii) The 100–fm (183–m) depth contour used between 34°27′ N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 34°27.00′ N. lat., 120°31.74′ W. long.;
(2) 34°21.90′ N. lat., 120°25.25′ W. long.;
(3) 34°24.86′ N. lat., 120°16.81′ W. long.;
(4) 34°22.80′ N. lat., 119°57.06′ W. long.;
(5) 34°18.59′ N. lat., 119°44.84′ W. long.;
(6) 34°15.04′ N. lat., 119°40.34′ W. long.;
(7) 34°14.40′ N. lat., 119°45.39′ W. long.;
(8) 34°12.32′ N. lat., 119°42.41′ W. long.;
(9) 34°9.71′ N. lat., 119°28.85′ W. long.;
(10) 34°4.70′ N. lat., 119°15.38′ W. long.;
(11) 34°3.33′ N. lat., 119°12.93′ W. long.;
(12) 34°2.72′ N. lat., 119°7.01′ W. long.;
(13) 34°3.90′ N. lat., 119°4.64′ W. long.;
(14) 34°1.80′ N. lat., 119°3.23′ W. long.;
(15) 33°59.32′ N. lat., 119°3.50′ W. long.;
(16) 33°59.00′ N. lat., 118°59.55′ W. long.;
(17) 33°59.51′ N. lat., 118°57.25′ W. long.;
(18) 33°58.82′ N. lat., 118°52.47′ W. long.;
(19) 33°58.54′ N. lat., 118°41.86′ W. long.;
(20) 33°55.07′ N. lat., 118°34.25′ W. long.;
(21) 33°54.28′ N. lat., 118°38.68′ W. long.;
(22) 33°51.00′ N. lat., 118°36.66′ W. long.;
(23) 33°39.77′ N. lat., 118°18.41′ W. long.;
(24) 33°35.50′ N. lat., 118°16.85′ W. long.;
(25) 33°32.68′ N. lat., 118°9.82′ W. long.;
(26) 33°34.09′ N. lat., 117°54.06′ W. long.;
(27) 33°31.60′ N. lat., 117°49.28′ W. long.;
(28) 33°16.07′ N. lat., 117°34.74′ W. long.;
(29) 33°7.06′ N. lat., 117°22.71′ W. long.;
(30) 32°53.34′ N. lat., 117°19.13′ W. long.;
(31) 32°46.39′ N. lat., 117°23.45′ W. long.;
(32) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(33) 32°34.22′ N. lat., 117°21.20′ W. long.

(ix) The 150–fm (274–m) depth contour used between 38° N. lat. and the U.S. border with Mexico as a western boundary for both the trawl RCA and the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 37°59.73′ N. lat., 123°29.85′ W. long.;
(2) 37°51.46′ N. lat., 123°25.16′ W. long.;
(3) 37°44.06′ N. lat., 123°11.44′ W. long.;
(4) 37°35.26′ N. lat., 123°2.29′ W. long.;
(5) 37°14.00′ N. lat., 122°50.00′ W. long.;
(6) 37°1.00′ N. lat., 122°36.00′ W. long.;
(7) 36°58.07′ N. lat., 122°28.35′ W. long.;
(8) 37°0.71′ N. lat., 122°24.53′ W. long.;
(9) 36°57.50′ N. lat., 122°24.98′ W. long.;
(10) 36°58.38′ N. lat., 122°21.85′ W. long.;
(11) 36°55.85′ N. lat., 122°21.95′ W. long.;
(12) 36°52.86′ N. lat., 122°12.89′ W. long.;
(13) 36°48.71′ N. lat., 122°9.28′ W. long.;
(14) 36°46.65′ N. lat., 122°4.10′ W. long.;
(15) 36°51.00′ N. lat., 121°58.00′ W. long.;
(16) 36°44.00′ N. lat., 121°59.00′ W. long.;
(17) 36°38.00′ N. lat., 122°2.00′ W. long.;
(18) 36°26.00′ N. lat., 121°59.05′ W. long.;
(19) 36°22.00′ N. lat., 122°1.00′ W. long.;
(20) 36°19.00′ N. lat., 122°5.00′ W. long.;
(21) 36°14.00′ N. lat., 121°58.00′ W. long.;
(22) 36°10.61′ N. lat., 121°44.51′ W. long.;
(23) 35°50.53′ N. lat., 121°29.93′ W. long.;
(24) 35°46.00′ N. lat., 121°28.00′ W. long.;
(25) 35°38.94′ N. lat., 121°23.16′ W. long.;
(26) 35°26.00′ N. lat., 121°8.00′ W. long.;
(27) 35°7.42′ N. lat., 120°57.08′ W. long.;
(28) 34°42.00′ N. lat., 120°54.00′ W. long.;
(29) 34°29.00′ N. lat., 120°44.00′ W. long.;
(30) 34°22.00′ N. lat., 120°32.00′ W. long.;
(31) 34°21.00′ N. lat., 120°21.00′ W. long.;
(32) 34°24.00′ N. lat., 120°15.00′ W. long.;
(33) 34°22.11′ N. lat., 119°56.63′ W. long.;
(34) 34°19.00′ N. lat., 119°48.00′ W. long.;
(35) 34°15.00′ N. lat., 119°48.00′ W. long.;
(36) 34°8.00′ N. lat., 119°37.00′ W. long.;
(37) 34°7.00′ N. lat., 120°11.00′ W. long.;
(38) 34°13.00′ N. lat., 120°30.00′ W. long.;
(39) 34°9.00′ N. lat., 120°38.00′ W. long.;
(40) 33°58.00′ N. lat., 120°29.00′ W. long.;
(41) 33°51.00′ N. lat., 120°9.00′ W. long.;
(42) 33°38.00′ N. lat., 119°58.00′ W. long.;
(43) 33°38.00′ N. lat., 119°50.00′ W. long.;
(44) 33°46.25′ N. lat., 119°49.32′ W. long.;
(45) 33°53.82′ N. lat., 119°53.42′ W. long.;
(46) 33°59.00′ N. lat., 119°21.00′ W. long.;
(47) 34°2.00′ N. lat., 119°13.00′ W. long.;
(48) 34°1.52′ N. lat., 119°4.50′ W. long.;
(49) 33°58.83′ N. lat., 119°3.76′ W. long.;

(50) 33°56.55′ N. lat., 118°40.50′ W. long.;
(51) 33°51.00′ N. lat., 118°38.00′ W. long.;
(52) 33°39.63′ N. lat., 118°18.75′ W. long.;
(53) 33°35.44′ N. lat., 118°17.57′ W. long.;
(54) 33°31.98′ N. lat., 118°12.59′ W. long.;
(55) 33°33.25′ N. lat., 117°54.15′ W. long.;
(56) 33°31.43′ N. lat., 117°49.84′ W. long.;
(57) 33°16.53′ N. lat., 117°36.13′ W. long.;
(58) 33°6.51′ N. lat., 117°24.11′ W. long.;
(59) 32°54.11′ N. lat., 117°21.45′ W. long.;
(60) 32°46.15′ N. lat., 117°24.26′ W. long.;
(61) 32°41.97′ N. lat., 117°22.10′ W. long.;
(62) 32°39.00′ N. lat., 117°28.13′ W. long.; and
(63) 32°34.84′ N. lat., 117°24.62′ W. long.

(x) The 150–fm (274–m) depth contour used around islands/seamounts off the state of California is defined by straight lines around each island/ seamount connecting all of the following points in the order stated:

(A) San Nicholas Island
(1) 33°32.73′ N. lat., 119°47.00′ W. long.;
(2) 33°14.00′ N. lat., 119°15.00′ W. long.;
(3) 33°12.00′ N. lat., 119°18.00′ W. long.;
(4) 33°11.00′ N. lat., 119°26.00′ W. long.;
(5) 33°13.13′ N. lat., 119°43.19′ W. long.;
(6) 33°13.11′ N. lat., 119°53.05′ W. long.;
(7) 33°30.00′ N. lat., 119°52.00′ W. long.; and
(8) 33°32.73′ N. lat., 119°47.00′ W. long.

(B) Santa Catalina Island
(1) 33°19.00′ N. lat., 118°15.00′ W. long.;
(2) 33°26.00′ N. lat., 118°22.00′ W. long.;
(3) 33°28.00′ N. lat., 118°28.00′ W. long.;
(4) 33°30.00′ N. lat., 118°31.00′ W. long.;
(5) 33°31.00′ N. lat., 118°37.00′ W. long.;
(6) 33°29.00′ N. lat., 118°41.00′ W. long.;
(7) 33°23.00′ N. lat., 118°31.00′ W. long.;
(8) 33°21.00′ N. lat., 118°33.00′ W. long.;
(9) 33°18.00′ N. lat., 118°28.00′ W. long.;
(10) 33°16.00′ N. lat., 118°13.00′ W. long.; and
(11) 33°19.00′ N. lat., 118°15.00′ W. long.

(C) San Clemente Island
(1) 32°48.50′ N. lat., 118°18.34′ W. long.;
(2) 32°56.00′ N. lat., 118°29.00′ W. long.;
(3) 33°3.00′ N. lat., 118°34.00′ W. long.;
(4) 33°5.00′ N. lat., 118°38.00′ W. long.;
(5) 33°3.00′ N. lat., 118°40.00′ W. long.;
(6) 32°48.00′ N. lat., 118°31.00′ W. long.;
(7) 32°43.00′ N. lat., 118°24.00′ W. long.; and
(8) 32°48.50′ N. lat., 118°18.34′ W. long.

(D) Santa Barbara Island
(1) 33°36.06′ N. lat., 118°57.15′ W. long.;
(2) 33°20.64′ N. lat., 118°59.39′ W. long.;
(3) 33°23.00′ N. lat., 119°7.00′ W. long.;
(4) 33°43.00′ N. lat., 119°14.00′ W. long.;
(5) 33°46.00′ N. lat., 119°12.00′ W. long.; and
(6) 33°36.06′ N. lat., 118°57.15′ W. long.

(E) Orange County Seamount
(1) 33°25.00′ N. lat., 118°1.00′ W. long.;
(2) 33°25.00′ N. lat., 117°58.00′ W. long.;
(3) 33°23.00′ N. lat., 117°58.00′ W. long.;
(4) 33°23.00′ N. lat., 118°1.00′ W. long.; and
(5) 33°25.00′ N. lat., 118°1.00′ W. long.

(xi) The 50–fm (91–m) depth contour off Oregon state, which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
(1) 46°16.00′ N. lat., 124°17.33′ W. long.;
(2) 45°50.88′ N. lat., 124°9.68′ W. long.;
(3) 45°12.99′ N. lat., 124°6.71′ W. long.;
(4) 44°52.48′ N. lat., 124°11.22′ W. long.;
(5) 44°42.41′ N. lat., 124°19.70′ W. long.;
(6) 44°38.80′ N. lat., 124°26.58′ W. long.;
(7) 44°24.99′ N. lat., 124°31.22′ W. long.;
(8) 44°18.11′ N. lat., 124°43.74′ W. long.;
(9) 44°15.23′ N. lat., 124°40.47′ W. long.;
(10) 44°18.80′ N. lat., 124°35.48′ W. long.;
(11) 44°19.62′ N. lat., 124°27.18′ W. long.;
(12) 43°56.65′ N. lat., 124°16.86′ W. long.;
(13) 43°34.95′ N. lat., 124°17.47′ W. long.;
(14) 43°12.60′ N. lat., 124°35.80′ W. long.;
(15) 43°8.96′ N. lat., 124°33.77′ W. long.;
(16) 42°59.66′ N. lat., 124°34.79′ W. long.;
(17) 42°54.29′ N. lat., 124°39.46′ W. long.;
(18) 42°46.50′ N. lat., 124°39.99′ W. long.;
(19) 42°41.00′ N. lat., 124°34.92′ W. long.;
(20) 42°36.29′ N. lat., 124°34.70′ W. long.;
(21) 42°28.36′ N. lat., 124°37.90′ W. long.;
(22) 42°25.53′ N. lat., 124°37.68′ W. long.;
(23) 42°18.64′ N. lat., 124°29.47′ W. long.;
(24) 42°12.95′ N. lat., 124°27.34′ W. long.;
(25) 42°3.04′ N. lat., 124°25.81′ W. long.; and
(26) 42°0.00′ N. lat., 124°26.21′ W. long.

(xii) The 150–fm (274–m) depth contour between 46°16′ N. lat. and 38° N. lat., which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
(1) 46°16.00′ N. lat., 124°26.15′ W. long.;
(2) 46°13.38′ N. lat., 124°31.36′ W. long.;
(3) 46°12.09′ N. lat., 124°38.39′ W. long.;
(4) 46°9.46′ N. lat., 124°40.64′ W. long.;
(5) 46°7.30′ N. lat., 124°40.68′ W. long.;
(6) 46°2.76′ N. lat., 124°44.01′ W. long.;
(7) 46°2.64′ N. lat., 124°47.96′ W. long.;
(8) 46°1.22′ N. lat., 124°43.47′ W. long.;
(9) 45°51.81′ N. lat., 124°42.89′ W. long.;
(10) 45°45.95′ N. lat., 124°40.72′ W. long.;
(11) 45°44.11′ N. lat., 124°43.09′ W. long.;
(12) 45°34.50′ N. lat., 124°30.27′ W. long.;
(13) 45°21.10′ N. lat., 124°23.11′ W. long.;
(14) 45°9.69′ N. lat., 124°20.45′ W. long.;
(15) 44°56.25′ N. lat., 124°27.03′ W. long.;
(16) 44°44.47′ N. lat., 124°37.85′ W. long.;

(17) 44°31.81′ N. lat., 124°39.60′ W. long.;
(18) 44°31.48′ N. lat., 124°43.30′ W. long.;
(19) 44°19.70′ N. lat., 124°50.88′ W. long.;
(20) 44°12.04′ N. lat., 124°58.16′ W. long.;
(21) 44°7.38′ N. lat., 124°57.87′ W. long.;
(22) 43°57.06′ N. lat., 124°57.20′ W. long.;
(23) 43°52.52′ N. lat., 124°49.00′ W. long.;
(24) 43°51.56′ N. lat., 124°37.49′ W. long.;
(25) 43°47.83′ N. lat., 124°36.43′ W. long.;
(26) 43°31.79′ N. lat., 124°36.80′ W. long.;
(27) 43°30.78′ N. lat., 124°38.19′ W. long.;
(28) 43°29.34′ N. lat., 124°36.77′ W. long.;
(29) 43°26.46′ N. lat., 124°40.02′ W. long.;
(30) 43°16.15′ N. lat., 124°44.37′ W. long.;
(31) 43°9.33′ N. lat., 124°45.35′ W. long.;
(32) 43°8.85′ N. lat., 124°48.92′ W. long.;
(33) 43°3.23′ N. lat., 124°52.41′ W. long.;
(34) 43°0.25′ N. lat., 124°51.93′ W. long.;
(35) 42°56.62′ N. lat., 124°53.93′ W. long.;
(36) 42°54.84′ N. lat., 124°54.01′ W. long.;
(37) 42°52.31′ N. lat., 124°50.76′ W. long.;
(38) 42°47.78′ N. lat., 124°47.27′ W. long.;
(39) 42°46.32′ N. lat., 124°43.59′ W. long.;
(40) 42°41.63′ N. lat., 124°44.07′ W. long.;
(41) 42°38.83′ N. lat., 124°42.77′ W. long.;
(42) 42°35.37′ N. lat., 124°43.22′ W. long.;
(43) 42°32.78′ N. lat., 124°44.68′ W. long.;
(44) 42°32.19′ N. lat., 124°42.40′ W. long.;
(45) 42°30.28′ N. lat., 124°44.30′ W. long.;
(46) 42°28.16′ N. lat., 124°48.38′ W. long.;
(47) 42°18.34′ N. lat., 124°38.77′ W. long.;
(48) 42°13.65′ N. lat., 124°36.82′ W. long.;
(49) 42°0.15′ N. lat., 124°35.81′ W. long.;
(50) 41°47.79′ N. lat., 124°29.52′ W. long.;
(51) 41°21.00′ N. lat., 124°29.00′ W. long.;
(52) 41°11.00′ N. lat., 124°23.00′ W. long.;
(53) 41°5.00′ N. lat., 124°23.00′ W. long.;
(54) 40°54.00′ N. lat., 124°26.00′ W. long.;
(55) 40°50.00′ N. lat., 124°26.00′ W. long.;
(56) 40°44.51′ N. lat., 124°30.83′ W. long.;
(57) 40°40.61′ N. lat., 124°32.06′ W. long.;
(58) 40°37.36′ N. lat., 124°29.41′ W. long.;
(59) 40°35.64′ N. lat., 124°30.47′ W. long.;
(60) 40°37.43′ N. lat., 124°37.10′ W. long.;
(61) 40°36.00′ N. lat., 124°40.00′ W. long.;
(62) 40°31.59′ N. lat., 124°40.72′ W. long.;
(63) 40°24.64′ N. lat., 124°35.62′ W. long.;
(64) 40°23.00′ N. lat., 124°32.00′ W. long.;
(65) 40°23.39′ N. lat., 124°28.70′ W. long.;
(66) 40°22.28′ N. lat., 124°25.25′ W. long.;
(67) 40°21.90′ N. lat., 124°25.17′ W. long.;
(68) 40°22.00′ N. lat., 124°28.00′ W. long.;
(69) 40°21.35′ N. lat., 124°29.53′ W. long.;
(70) 40°19.75′ N. lat., 124°28.98′ W. long.;
(71) 40°18.15′ N. lat., 124°27.01′ W. long.;
(72) 40°17.45′ N. lat., 124°25.49′ W. long.;
(73) 40°18.00′ N. lat., 124°24.00′ W. long.;
(74) 40°16.00′ N. lat., 124°26.00′ W. long.;
(75) 40°17.00′ N. lat., 124°35.00′ W. long.;
(76) 40°16.00′ N. lat., 124°36.00′ W. long.;
(77) 40°10.07′ N. lat., 124°22.90′ W. long.;
(78) 40°7.00′ N. lat., 124°19.00′ W. long.;
(79) 40°8.10′ N. lat., 124°16.70′ W. long.;
(80) 40°5.90′ N. lat., 124°17.77′ W. long.;
(81) 40°1.46′ N. lat., 124°12.85′ W. long.;
(82) 40°4.32′ N. lat., 124°10.33′ W. long.;
(83) 40°3.21′ N. lat., 124°8.83′ W. long.;
(84) 40°1.33′ N. lat., 124°8.70′ W. long.;
(85) 39°58.51′ N. lat., 124°12.44′ W. long.; and
(86) 38°00.00′ N. lat., 124°7.49′ W. long.

(20) Rockfish categories. Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope (scientific names appear in Table 2). Nearshore rockfish are further divided into shallow nearshore and deeper nearshore categories south of 40°10′ N. lat. Trip limits are established for ''minor rockfish'' species according to these categories (see Tables 2–5).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2, which includes California scorpionfish.

(i) Shallow nearshore rockfish consists of black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish.

(ii) Deeper nearshore rockfish consists of black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish.

(iii) California scorpionfish.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.

(c) Slope rockfish consists of Pacific ocean perch, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

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Table 2 – Minor Rockfish Species (excludes thornyheads)

North of 40°10' N. lat.	South of 40°10' N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d),) size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A. (7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph IV.A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception

must adhere to CCA restrictions (see paragraph IV.A. (20)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

A header in Table 3 (North), Table 3 (South), Table 4 (North), and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. [Note: Between a line drawn due south from

Point Fermin (33° 42′ 30″ N. lat.; 118° 17′ 30″ W. long.) and a line drawn due west from the Newport South Jetty (33° 35′ 37″ N. lat.; 117° 52′ 50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m).]

Management measures may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6,000 lb/ 2 months
5	Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/ 2 months				7,000 lb/ 2 months
6	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
7	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
8	**Flatfish**						
9	All other flatfish[4/]	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
10	Petrale sole	Not limited					Not limited
11	Rex sole	Included in all other flatfish					
12	Arrowtooth flounder	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
13	**Whiting[5/]**						
14	mid-water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
15	**Other Fish[9/]**	Not limited					
16	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
17	**Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
18	**Widow rockfish - mid-water trawl**						
19	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
20	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
21	**Yellowtail**						
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
23	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 3,000 lb/ month					
24	**Minor nearshore rockfish**	300 lb/ month					
25	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):						
40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1 **Minor slope rockfish[3/]**						
2 40°10' - 38° N. lat.	1,800 lb/ 2 months					
3 South of 38° N. lat.	30,000 lb/ 2 months					
4 **Splitnose**						
5 40°10' - 38° N. lat.	1,800 lb/ 2 months					
6 South of 38° N. lat.	30,000 lb/ 2 months					
7 **DTS complex**						
8 Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6000 lb/ 2 months
9 Longspine thornyhead	8,000 lb /2 months	9,000 lb/ 2 months				7000 lb/ 2 months
10 Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
11 Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
12 **Flatfish**						
13 All other flatfish[4/]	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14 Petrale sole	No limit					No limit
15 Rex sole	Included in all other flatfish					
16 Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17 **Whiting[5/]**						
18 mid water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
19 **Other Fish[9/]**	Not limited					
20 **Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
21 **Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
22 **Widow rockfish**						
23 mid water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
24 **Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
25 **Bocaccio**	CLOSED[6/]					
26 **Cowcod**	CLOSED[6/]					
27 **Minor nearshore rockfish**	300 lb/ month					
28 **Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
	South of 40°10' N. lat.	20 fm - 150 fm					
1	**Minor slope rockfish**	1,800 lb/ 2 months	No more than 25% of the weight of sablefish landed/ trip				1,800 lb/ 2 months
2	**Splitnose**	1,800 lb/ 2 months					
3	**Pacific ocean perch**	1,800 lb/ 2 months					
4	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
5	**Longspine thornyhead**	9,000 lb/ 2 months					
6	**Shortspine thornyhead**	2,000 lb/ 2 months					
7	**Dover sole**	5,000 lb/ month					
8	**Arrowtooth flounder**						
9	**Petrale sole**						
10	**Rex sole**						
11	**All other flatfish[2/]**						
12	**Whiting[3/]**	10,000 lb/ trip					
13	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month					
14	**Canary rockfish**	CLOSED[5/]					
15	**Yelloweye rockfish**	CLOSED[5/]					
16	**Cowcod**	CLOSED[5/]					
17	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[6/]					
18	**Lingcod[7/]**	CLOSED[5/]		400 lb/ month			CLOSED[5/]

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ TThe whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):	20 fm - 150 fm			20 fm - 150 fm -- Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm	20 fm - 150 fm	
1	**Minor slope rockfish[4/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months	No more than 25% of weight of sablefish landed/ trip				1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	20,000 lb/ 2 months					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10	**Longspine thornyhead**	9,000 lb/ 2 months					
11	**Shortspine thornyhead**	2,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**Rex sole**						
16	**All other flatfish[2/]**						
17	**Whiting[3/]**	10,000 lb/ trip					
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]					
20	**Yelloweye rockfish**	CLOSED[5/]					
21	**Cowcod**	CLOSED[5/]					
22	**Bocaccio**	CLOSED[5/]					
23	**Minor nearshore rockfish**						
24	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
25	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
27	**Lingcod[6/]**	CLOSED[5/]		400 lb/ month, when nearshore open			CLOSED[5/]

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e) that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish*. The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear. See footnote e/ of Table 1a.

(a) *Trawl trip and size limits*. Management measures for the limited entry trawl fishery for sablefish are listed in Table 3 (North) and Table 3 (South).

(b) *Nontrawl (fixed gear) trip and size limits*. To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 660.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season*. The primary season begins at 12 noon l.t. on April 1, 2003, and ends at 12 noon l.t. on

October 31, 2003. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2003, the following limits would be in effect: Tier 1, 53,000 lb (24,040 kg); Tier 2, 24,000 lb (10,886 kg); Tier 3, 14,000 lb (6,350 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2003 count against the cumulative limits associated with the permit(s) registered for use with that vessel.

(ii) *Daily trip limit*. Daily and/or weekly sablefish trip limits listed in Table 4 (North) and Table 4 (South) apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 (South) apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(iii) *Participating in both the primary and daily trip limit fisheries*. A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2003, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(3) *Whiting*. Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations*. The non-tribal allocations, based on percentages that are applied to the commercial OY of 121,200 mt in 2003 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) Catcher/processor sector—41,288 mt (34 percent);

(ii) Mothership sector—29,080 mt (24 percent);

(iii) Shore-based sector—50,904 mt (42 percent). No more than 5 percent (2,545 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2003.

(iv) Tribal allocation—See paragraph V.

(b) *Seasons*. The 2003 primary seasons for the whiting fishery start on the same dates as in 2002, as follows (see 50 CFR 660.323(a)(3)):

(i) Catcher/processor sector—May 15;

(ii) Mothership sector—May 15;

(iii) Shore-based sector—June 15 north of 42° N. lat.; April 1 between 42°-40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits*. (i) Before and after the regular season. The ''per trip'' limit for whiting before and after the regular season for the shore-based sector is announced in Table 3 (North) and Table 3 (South), as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) Inside the Eureka 100 fm (183 m) contour. No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish*. The regulations at 50 CFR 660.323(a)(1) state: ''The trip limit for black rockfish (Sebastes melanops) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.'' These ''per trip'' limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 (North) and Table 5 (North) of section IV. The crossover provisions at paragraphs IV.A. (12) do not apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General*. Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), CA halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d)), size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10′ N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the RCA (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33 42′30″ N. lat.; 118 17′30″ W. long.) and a line drawn due west from the Newport South Jetty (33 35′37″ N. lat.; 117 52′50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August.] For vessels participating in exempted trawl fisheries, the RCAs are the same as those for limited entry trawl gear. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs. The trip limit at 50 CFR 660.323(a)(1) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).)

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Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):						
	North of 46°16' N. lat.	0 fm - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed					
2	**Pacific ocean perch**	100 lb/ month					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
4	**Thornyheads**	CLOSED[5/]					
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**Rex sole**						
9	**All other flatfish[3/]**						
10	**Whiting**	300 lb/ month					
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month					
12	**Canary rockfish**	CLOSED[5/]					
13	**Yelloweye rockfish**	CLOSED[5/]					
14	**Cowcod**	CLOSED[5/]					
15	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[4/]					
16	**Lingcod[6/]**	CLOSED[5/]		300 lb/ month			CLOSED[5/]
17	**Other Fish[7/]**	Not limited					
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*						
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*						
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
		20 fm - 150 fm			20 fm - 150 fm	20 fm - 150 fm	
	South of 40°10' N. lat.	Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm					
1	**Minor slope rockfish[2/]**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**Rex sole**						
15	**All other flatfish[3/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]					
19	**Yelloweye rockfish**	CLOSED[5/]					
20	**Cowcod**	CLOSED[5/]					
21	**Bocaccio**	CLOSED[5/]					
22	**Minor nearshore rockfish**						
23	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
26	**Lingcod[4/]**	CLOSED[5/]		300 lb/ month, when nearshore open			CLOSED[5/]
27	**Other Fish[6/]**	Not limited					
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*						
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**						
31	**EXEMPTED TRAWL Rockfish Conservation Area[8/] (RCA):**						
32	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
33	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
34	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers. [Note: The States of California and Washington will likely prohibit trawling for spot prawn beginning in 2003, while the State of Oregon will likely begin phasing out trawling for spot prawn in 2003.] Trip limits and RCAs for groundfish retained in the spot and ridgeback prawn, California halibut, or sea cucumber fisheries are in Table 5 (North) and Table 5 (South). (a) State law. The trip limits in Table 5(North) and Table 5(South) are not intended to supersede any more restrictive State law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(b) *Participation in the California halibut fishery*. A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: ''No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means ''the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.''

(c) *Participation in the sea cucumber fishery*. A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(3) Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp. Trip limits for groundfish retained in the pink shrimp fishery are in Table 5 (North) and Table 5 (South). Notwithstanding section IV.A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish.

(1) *Washington*. For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(a) *Yelloweye Rockfish Conservation Area*. The Yelloweye Rockfish Conservation Area, or YRCA, is an ''C-shaped'' area which is closed to recreational groundfish and halibut fishing. The coordinates for the YRCA are defined at 50 CFR 660.304(d).

(b) *Rockfish*. In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit, of which no more than 1 may be canary rockfish. Taking and retaining yelloweye rockfish is prohibited.

(c) *Lingcod*. Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31. In areas seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open (i.e., between March 16–October 15), there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon*. The bag limits for each person engaged in recreational fishing seaward of Oregon are 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no more than 1 may be canary rockfish, no more than 1 may be yelloweye rockfish and when the all-depth recreational fisheries for Pacific halibut (Hippoglossus stenolopis) are open, the first Pacific halibut taken of 32 in (81 cm) (or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take, retain, possess or land yelloweye rockfish or canary rockfish.

(3) *California*. Seaward of California (north and south of 40°10′ N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20–fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas.

(a) North of 40°10′ N. lat. North of 40°10′ N. lat. to the California/Oregon border, California's recreational groundfish fishery will generally conform with Oregon's recreational regulations (see IV.D.(2)). For each person engaged in recreational fishing seaward of California north of 40°10′ N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex*. The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin.''

(A) *Seasons*. North of 40°10′ N. lat., recreational fishing for the RCG Complex is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits*. North of 40°10′ N. lat., the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, 1 may be canary rockfish, and no more than 1 per day up to a maximum of two per boat may be yelloweye rockfish. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 greenlings (kelp and/or rock greenlings) per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. The following size limits apply: cabezon may be no smaller than 15 in (38 cm) total length and kelp and rock greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/Filleting*. Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned

rockfish fillets may be no smaller than 6.5 in (16.6 cm). ‘‘Brown-skinned’’ rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(ii) *Lingcod*.

(A) *Seasons*. North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits*. North of 40°10′ N. lat., the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Fileting*. Lingcod filets may be no smaller than 16 in. (41 cm) in length .

(b) South of 40°10′ N. lat. For each person engaged in recreational fishing seaward of California south of 40°10′ N. lat., the following seasons, bag limits, size limits and closed areas apply:

(i) *Closed Areas*.

(A) *Cowcod Conservation Areas*. Recreational fishing for all groundfish is prohibited within the CCAs, for coordinates described in Federal regulations at 50 CFR 660.304(c), except that fishing for sanddabs is permitted subject to the provisions in paragraph IV.D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfishes) are permitted in waters shoreward of the 20–fm (37–m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

(B) South of 40°10′ N. lat., recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20–fm (37–m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20–fm (37–m) depth contour subject to the provisions in paragraph IV.D.(3)(iv).

(ii) *RCG Complex*. The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ‘‘sculpin.’’

(A) *Seasons*. South of 40°10′ N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of 2–hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day, of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 fish per day may be greenlings (kelp and/or rock greenlings) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. The following size limits apply: cabezon may be no smaller than 15 in (38 cm) and kelp and rock greenling may be no smaller than 12 in (30 cm).

(B) *Dressing/Filleting*. Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). ‘‘Brown-skinned’’ rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *California scorpionfish*. California scorpionfish only occur south of 40°10′ N. lat.

(A) *Seasons*. South of 40°10′ N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is permitted only inside the 20–fm (37–m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33 42′30″ N. lat.; 118 17′30’’ W. long.) and a line drawn due west from the Newport South Jetty (33 35′37″ N. lat.; 117 52′50″ W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50 fm (91 m) during July-August), subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10′ N. lat., in times and areas where the recreational season for California scorpionfish is open, and the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting*. California scorpionfish fillets may be no smaller than 5 in (12.8 cm).

(iv) *Lingcod*. (A) *Seasons*. South of 40°10′ N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of 2–hooks and one line when fishing for lingcod, and the bag limit is 2 lingcod per day. Lingcod do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Filleting*. Lingcod fillets may be no smaller than 16 in. (41 cm) in length.

(iv) *Sanddabs*. South of 40°10′ N. lat., recreational fishing for sanddabs is permitted both shoreward and seaward of the 20 fm (37 m) depth contour (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10′ N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20- fm (37–m) depth contour subject to a limit of up to 12–hooks ‘‘Number 2’’ or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 2 lb of weight per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

V. Washington Coastal Tribal Fisheries

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in

general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 60 CFR 660.324).

A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries, and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations.

The tribal allocation for black rockfish is the same in 2003 as in 2002. Also similar to 2002, the tribal sablefish allocation is 10 percent of the total catch OY (650 mt), less 3 percent for estimated discard mortality, or 631 mt.

In 1999 through 2002, the tribal whiting allocation has been based on a methodology originally proposed by the Makah Tribe in 1998. The methodology is an abundance-based sliding scale that determines the tribal allocation based on the level of the overall U.S. OY, up to a maximum 17.5 percent tribal harvest ceiling at OY levels below 145,000 mt. The tribes have proposed using the same methodology in 2003. In 2003, applying the sliding scale methodology to a 148,200–mt overall OY results in a 25,000–mt tribal whiting allocation, which will be taken by the Makah Tribe. No other tribes have proposed to harvest whiting in 2003.

The sliding scale methodology used to determine the treaty Indian share of Pacific whiting is the subject of ongoing litigation. In United States v. Washington, Subproceeding 96–2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. United States v. Washington, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002. Midwater Trawlers Cooperative v. Daley, C96–1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002). Additional briefing will occur in this case. However, at this time NMFS remains under a Court Order in Subproceeding 96–2 to continue use of the methodology unless the Secretary finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the methodology, it has been used to determine the 2003 tribal allocation.

For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries are restricted to 300 lb (136 kg) per day and 900 lb (408 kg) per week cumulative limits. Tribal fisheries are expected to take about 5.2 mt of lingcod in 2003. For rockfish species, the 2003 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under a 300–lb (136–kg) per trip limit each for canary rockfish, thornyheads, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100–lb (45–kg) trip limit for yelloweye rockfish. A 300–lb (136 kg) canary rockfish trip limit is expected to result in landings of 2.3 mt in 2003. A 300–lb (136–kg) thornyheads trip limit is expected to result in landings of 2.7 mt in 2003. Other rockfish limits are expected to result in the following landings levels: widow rockfish, 45 mt; yelloweye rockfish, 3.1 mt; yellowtail rockfish, 400 mt; minor nearshore rockfish, 2 mt; minor shelf rockfish excluding yelloweye, 4.5 mt; minor slope rockfish, 4 mt. Trace amounts (1 mt) of POP and darkblotched rockfish may also be landed in tribal commercial fisheries.

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40′00″ N. lat.) and Leadbetter Point, WA (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300–lb (136–kg) trip limit.

(3) Canary rockfish are subject to a 300–lb (136–kg) trip limit.

(4) Yelloweye rockfish are subject to a 100–lb (45–kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per 2–month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300–lb (136–kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300–lb (136–kg) daily trip limit and a 900–lb (408–kg) weekly limit.

D. Pacific whiting

The tribal allocation is 25,000 mt.

Classification

These proposed specifications and management measures for 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two fall groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on

the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

The Council prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities.

NMFS is proposing the 2003 annual specifications and management measures to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant groundfish stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYS, follows the guidance of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP for protecting and conserving fish stocks. Annual management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the Small Business Administration. There are also about 450 groundfish buyers on the West Coast, approximately 5 percent of which are responsible for about 80 percent of West Coast groundfish purchases. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

The Council considered five alternative specifications and management measures regimes for 2003: the no action alternative, which would have implemented the 2002 regime for 2003; the low OY alternative, which set harvest levels so that overfished stocks would have an 80 percent probability of rebuilding within T_{max}; the high OY alternative, which set harvest levels so that overfished stocks would have a 50 percent probability of rebuilding within T_{max}; the Allocation Committee alternative, which set harvest levels intermediate to those of the low and high alternatives, but includes management through depth-based closures, and; the Council OY alternatives (preferred alternative) which was the same as the Allocation Committee alternative, except that it included a higher sablefish harvest north of Point Conception, CA and more restrictive recreational fishery management measures south of Cape Mendocino, CA. Each of these alternatives included both harvest levels (specifications) and management measures needed to achieve those harvest levels, with the most restrictive management measures corresponding to the lowest OYs.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the draft EIS for this action reviewed alternatives other than the no action alternative for expected declines in revenue and income from 2001 levels. Declines were not measured from 2002 levels because complete data from 2002 is not yet available. The low OY alternative was expected to reduce commercial exvessel revenue by $60 million in 2003, reduce overall commercial harvest income by $274 million, and reduce recreational fishery income (mainly charter businesses) by $150 million. The high OY alternative was expected to reduce commercial exvessel revenue by $6 million in 2003, reduce overall commercial harvest income by $16 million, and reduce recreational fishery income by $1.3 million. The economic effects of the Allocation Committee alternative were analyzed both for management with depth-based regulatory measures and without those measures. The Allocation Committee alternative without depth-based regulatory measures was expected to reduce commercial exvessel revenue by $21 million in 2003, reduce overall commercial harvest income by $53 million, and reduce recreational fishery income by $1.3 million. The Allocation Committee alternative with depth-based regulatory measures was expected to reduce commercial exvessel revenue by $15 million in 2003, reduce overall commercial harvest income by $40 million, and reduce recreational fishery income by $1.3 million. The Council's preferred alternative, which includes depth-based regulatory measures and a recreational fishery management regime designed to more strictly constrain harvest of overfished species, was expected to reduce commercial exvessel revenue by $13 million in 2003, reduce overall commercial harvest income by $35 million, and reduce recreational fishery income by $26 million. The Council's preferred alternative meets the conservation requirements of the Magnuson-Stevens Act, while reducing to the extent possible the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

Depth based management is particularly expected to both protect overfished species from harvest in areas where they commonly occur and allow fisheries greater access to more abundant stocks outside of the closed areas. Without depth-based management, harvest of abundant stocks would have been more severely restricted because there would have been no measures to prevent vessels from operating in areas where abundant and overfished stocks cooccur.

Recreational fisheries management measures in 2001 and 2002 were not adequately conservative and those fisheries exceeded their overfished species retention levels in both years. Thus, the recreational fisheries are more severely restricted under the preferred alternative than under the high OY alternative or under either of the Allocation Committee alternatives. While the preferred alternative is expected to result in greater income declines for businesses associated with recreational fishing, those declines reflect conservation measures expected to better protect overfished species. Estimates of declines in revenues and income in this section are from the draft EIS for this action and may change with the completion of the final EIS.

Revenues for many groundfish fishery participants under the preferred alternative are expected to decline in 2003. These declines are mainly attributable to more restrictive management measures intended to protect overfished species. It is difficult to estimate exactly how this overall decline in landings and revenue will affect individual members of the groundfish fleet. However, the overall decline is significant enough to suggest that small businesses with a substantial portion of their incomes dependent on groundfish will be negatively affected by implementation of the 2003 proposed harvest levels. Overall, commercial vessels that target groundfish are expected to have a 21 percent decline in groundfish-related ex-vessel revenue and a 5 percent decline in total ex-vessel fishing revenue. The cumulative effect of 2003 management on the personal incomes of fishery participants is expected to be a $35 million decline.

Vessels and groundfish buyers that rely heavily on groundfish for their annual income, as opposed to other West Coast fish species, will be more affected by the 2003 management regime than those with more diversified catch and harvest assemblages.

Most of the significant catch and effort reductions in the recreational fleet would occur off California south of 40°10′ N. lat. Little change in overall recreational effort is expected in Washington or Oregon. For the West Coast recreational fleet, personal income is expected to decline by 10 percent overall, with a cumulative effect of a $26 million decline. These personal income values are a measure of the contribution of recreational fishing to businesses and local communities. Reduction in effort in California is expected to result in a reduction in revenue for businesses that cater to recreational fishers. Gross receipts for recreational groundfish activities will likely decline in proportion with the decline in number of angler trips, however, net profits may decline more given that certain costs will be fixed on an annual and per trip basis. Revenue declines from groundfish may be offset to the degree that charter vessels operate in other fisheries.

This rule does not propose any new reporting and recordkeeping requirements. Other regulations affecting the West Coast groundfish fisheries are primarily found at 50 CFR 660.301–360. A copy of this analysis is available from the Council (see ADDRESSES).

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's Biological Opinion'e;s (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

List of Subjects in 50 CFR Part 660

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

Dated: December 20, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

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

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

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

2. In § 660.302, the definition for ''Open access fishery'' is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Open access fishery means the fishery composed of vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery. Any commercial fishing vessels that does not have a limited entry permit and which lands groundfish in any commercial fishery is a participant in the open access fishery.

* * * * *

3. In § 660.304, the section heading and entire section are revised to read as follows:

§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.

(a) *Management areas*—(1) *Vancouver*. (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48 deg.35′75″ N. lat., 124 deg.43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48 deg.29′37.19″ N. lat., 124 deg.43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48 deg.29′37.19″	124 deg.43′33.19″
2	48 deg.30′11″	124 deg.47′13″
3	48 deg.30′22″	124 deg.50′21″
4	48 deg.30′14″	124 deg.54′52″
5	48 deg.29′57″	124 deg.59′14″
6	48 deg.29′44″	125 deg.00′06″
7	48 deg.28′09″	125 deg.05′47″
8	48 deg.27′10″	125 deg.08′25″
9	48 deg.26′47″	125 deg.09′12″
10	48 deg.20′16″	125 deg.22′48″

Point	N. lat.	W. long.
11	48 deg.18′22″	125 deg.29′58″
12	48 deg.11′05″	125 deg.53′48″
13	47 deg.49′15″	126 deg.40′57″
14	47 deg.36′47″	127 deg.41′23″
15	47 deg.22′00″	127 deg.41′23″
16	46 deg.42′05″	128 deg.51′56″
17	46 deg.31′47″	129 deg.07′39″

(iii) The southern limit is 47 deg.30′ N. lat.

(2) *Columbia*. (i) The northern limit is 47 deg.30′ N. lat.

(ii) The southern limit is 43 deg.00′ N. lat.

(3) *Eureka*. (i) The northern limit is 43 deg.00′ N. lat.

(ii) The southern limit is 40 deg.30′ N. lat.

(4) *Monterey*. (i) The northern limit is 40 deg.30′ N. lat.

(ii) The southern limit is 36 deg.00′ N. lat.

(5) *Conception*. (i) The northern limit is 36 deg.00′ N. lat.

(ii) The southern limit is the U.S.–Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32 deg.35′22″	117 deg.27′49″
2	32 deg.37′37″	117 deg.49′31″
3	31 deg.07′58″	118 deg.36′18″
4	30 deg.32′31″	121 deg.51′58″

(b) Commonly used geographic coordinates—

(1) Cape Falcon, OR--45°46′ N. lat.

(2) Cape Lookout, OR--45°20′15″ N. lat.

(3) Cape Blanco, OR--42°50′ N. lat.

(4) Cape Mendocino, CA--40°30′ N. lat.

(5) North/South management line--40°10′ N. lat.

(6) Point Arena, CA--38°57′30″ N. lat.

(7) Point Conception, CA--34°27′ N. lat.

(c) *Cowcod Conservation Areas (CCAs)*. (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;
and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02′ W. long.;
32°42′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02′ W. long.;
and connecting back to 32°42′ N. lat., 118°02′ W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA)*. The YRCA is an C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;
and connecting back to 48°18′ N. lat.; 125°18′ W. long.

(e) *International boundaries*. (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the ''3-mile limit'').

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

4. In § 660.322, paragraphs (b)(5) and (b)(6) are revised to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(b) *Trawl gear*. * * *

(5) *Large and small footrope trawl gear*. Large footrope trawl gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(6) *Pelagic or ''midwater'' trawls*. Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. The footrope of pelagic gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of pelagic trawl gear must be bare and may not be suspended with chains or any other materials. Sweeplines, including the bottom leg of the bridle, must be

bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16–inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a ''skirt'') may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

* * * * *

5. In § 660.323, paragraph (b) is revised to read as follows:

§ 660.323 Catch restrictions.

* * * * *

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they have been designated as routine through the two-meeting process described in PCGFMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries* —(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; Dover sole, sablefish, shortspine thornyheads, longspine thornyheads, and the ''DTS complex,'' which is composed of those species; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and ''other fish'' as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an annual or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on an annual or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas may be imposed on any sector of the groundfish fleet using specific boundary lines that approximate depth contours with latitude/longitude waypoints. Depth-based management measures and the setting of closed areas may be used to protect and rebuild overfished stocks.

* * * * *

[FR Doc. 02–32756 Filed 12–31–02; 1:23 pm]

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Federal Register

Tuesday,

January 7, 2003

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974; Automatic Rollovers; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210–AA92

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974; Automatic Rollovers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: Section 657(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 directs the Department of Labor (Department) to develop, through regulations, safe harbors relating to the automatic rollovers of certain mandatory tax-qualified plan distributions to individual retirement plans. Under these safe harbors, the designation of an institution and the investment of funds by a plan administrator to receive automatic rollovers in accordance with section 401(a)(31)(B) of the Internal Revenue Code (Code) would be deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act (ERISA). The purpose of this document is to request information from the public on issues relating to the development of these safe harbors and to assist in drafting regulations. The Department also seeks information on low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Code and for other uses that promote the preservation of assets for retirement income.

DATES: Written or electronic responses should be submitted to the Department of Labor on or before March 10, 2003.

RESPONSES: Written responses (preferably, at least three copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, Attention: Automatic Rollovers RFI. All responses will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, Washington, DC 20210. Electronic responses should contain ''Automatic Rollovers RFI'' in the subject line and be addressed to *e-ORI@pwba.dol.gov.*

FOR FURTHER INFORMATION CONTACT: Stacey A. Gillis or Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Tax-qualified retirement plans are permitted to make an immediate distribution to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[1] Recipients may choose to roll the plan distribution (cash-out) into an IRA [2] or another qualified plan, or they may retain the cash-out as a taxable distribution. Prior to making a distribution, plan administrators are required to provide the participant with a written explanation of the Code provisions under which the participant may elect to have the distribution transferred directly to an IRA or another qualified plan, the provision requiring tax withholding if the distribution is not directly transferred and the provisions under which the distribution will not be taxed if the participant transfers the distribution to an IRA or another qualified plan within 60 days of receipt.[3] In recent years, both plan sponsors and participants have indicated an interest in establishing rollover accounts as the default form of distribution option to encourage preservation of the amount distributed for retirement purposes and to mitigate the tax consequences to the participant with respect to the amount distributed.

In July 2000, the Internal Revenue Service (Service) issued Revenue Ruling 2000–36 [4] approving a plan amendment which permitted a direct rollover to an IRA as the default distribution option for an involuntary cash-out of a qualified plan distribution of an amount greater than $1,000 but less than or equal to $5,000, whenever a separating employee failed to make an affirmative election to either choose a direct rollover or take a taxable cash payment. The Service held that the plan amendment requiring the direct rollover to an IRA in these circumstances did not cause the plan to fail to satisfy the requirements of sections 401(a)(31) and 411(d)(6) of the Code. The plan amendment also provided that in the case of a default direct rollover, the plan administrator would select an IRA trustee, custodian, or issuer that is unrelated to the employer, establish the IRA with that trustee, custodian, or issuer on behalf of any separating employee, and make the initial investment choices for the account.

In this ruling, the Department advised the Treasury and the Service that, under Title I of the ERISA, in the context of a default direct rollover described in the ruling, the participant will cease to be a participant covered under the plan within the meaning of 29 CFR 2510.3–3(d)(2)(ii)(B), where the distribution constitutes the entire benefit rights of a participant, and the distributed assets will cease to be plan assets within the meaning of 29 CFR 2510.3–101. However, the Department also noted that the selection of an IRA trustee, custodian or issuer and IRA investment for purposes of a default direct rollover would constitute a fiduciary act subject to the general fiduciary standards and prohibited transaction provisions of ERISA.[5] In addition, the Department stated that plan provisions governing the default direct rollover of distributions, including the participant's ability to affirmatively opt out of the arrangement, must be described in the plan's summary plan description furnished to participants and beneficiaries.

Subsequent to the issuance of Revenue Ruling 2000–36, section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16, amended section 401(a)(31) of the Code to require that, absent an affirmative election by the participant, certain mandatory distributions from a qualified retirement plan must be directly transferred to an individual retirement plan [6] of a designated trustee or issuer. Specifically, section 657(a) of EGTRRA added a new section 401(a)(31)(B)(i) to the Code to provide that, in the case of a trust that is part of an eligible plan, the trust will not constitute a qualified trust unless the plan of which the trust is a

[1] Code sections 411(a)(11) and 417(e).

[2] ''IRA'' means an individual retirement account under section 408(a) of the Code and an individual retirement annuity under section 408(b) of the Code.

[3] Code section 402(f).

[4] Rev. Rul. 2000–36, 2000–2 C.B. 140.

[5] See the Department's information letter to Diana Orantes Ceresi (Feb. 19, 1998) regarding the factors a plan fiduciary should consider in selecting a service provider. Among other things, a responsible plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the service provider, the quality of the services offered and the reasonableness of the fees charged in light of the services provided. Such process should also be designed to avoid self-dealing, conflicts of interest or other improper influence.

[6] Section 401(a)(31)(B)(i) of the Code requires the transfer to be made to an ''individual retirement plan,'' which section 7701(a)(37) of the Code defines to mean an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b), *i.e.* ''IRA'.

part provides that if a mandatory distribution of more than $1,000 is made and the distributee (generally the participant) does not elect to have such distribution paid directly to an eligible retirement plan or receive the distribution directly, the plan administrator must transfer such distribution to an IRA of a designated trustee or issuer. Section 657(a)(1)(B)(ii) of EGTRRA defines an ''eligible plan'' as a plan which provides for an immediate distribution to a participant of any ''nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11) of the Code) does not exceed $5,000''.

Additionally, section 657(a) of EGTRRA added a notice requirement in section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify the distributee in writing, either separately or as part of the notice required under section 402(f) of the Code, that the participant may transfer the distribution to another IRA.[7]

As part of these new EGTRRA provisions, section 657(c)(2)(A) directs the Department to issue final regulations providing safe harbors under which the plan administrator's designation of an institution to receive the automatic rollover and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary requirements of section 404(a) of ERISA. Moreover, the provisions requiring all tax-qualified retirement plans to make automatic rollovers to IRAs the default option for involuntary distributions of certain defined amounts will not become effective until the Department issues the safe harbor regulations.

Section 657(c)(2)(B) of EGTRRA also states that the Secretaries of Labor and Treasury may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of Code section 401(a)(31)(B) transfers and for other uses that promote the preservation of assets for retirement income.

B. Issues Under Consideration

Automatic Rollover Safe Harbors

The Department is interested in comments regarding appropriate standards for the development of safe harbors under which the designation of an institution providing an IRA to receive the automatic rollover of funds and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary requirements of section 404(a) of ERISA. A list of some of the issues with respect to which comments are requested is included below. Responses on other issues pertinent to the Department's consideration are also invited.

As a framework for these comments, the Department notes that existing Treasury regulations describe fundamental requirements that must be satisfied in order for IRAs to maintain their tax classification under the Code.[8] Any standards made part of a safe harbor would supplement such requirements.

Request for Information

1. *Standards for Safe Harbor Entity:* What criteria should apply to the Department's determination that an IRA custodian, trustee or issuer (IRA provider) qualifies as a safe harbor entity? Should the standards differ depending on whether the IRA is an account or an annuity? Should IRA providers who are existing plan service providers receive any special consideration if plan investments can be rolled directly in-kind without transaction fees for liquidating plan investments and purchasing IRA investments?

2. *Standards for Safe Harbor Initial Investment:* What criteria should apply to the Department's determination that an initial investment qualifies as a safe harbor investment? Should consideration be given to including or excluding specific investment vehicles in the safe harbor? If mutual funds are included, should they be limited to passively invested mutual funds such as index funds or include all publicly traded mutual funds? Should the criteria include specific asset allocation standards?

3. *Establishment Costs:* What is the range of establishment costs that IRA providers charge for the establishment or set-up of IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor? Should regulations clarify that establishment costs are either an expense of the distributing plan or a charge to the IRA funds of the account-holder?

4. *Termination Costs:* What is the range of termination costs that IRA providers charge for the termination or closure of IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor?

5. *Maintenance Fees:* What is the range of maintenance and administrative fees that IRA providers charge for maintaining and administering IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor?

6. *Investment Fees:* What types of fees would be associated with the initial investment of the IRA? What types of fees would be associated with the ongoing investment vehicle of the IRA? What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor? Should the IRA principal be guaranteed with all investment fees, maintenance fees and establishment costs being charged to investment earnings?

7. *Surrender Charges:* What is the range of surrender charges that investment vehicles for IRAs of the typical size of an automatic rollover are subject to upon surrender or redemption, how do they vary and what circumstances trigger their imposition? What factors should be considered in determining the reasonableness of these charges imposed by an IRA provider under the safe harbor?

8. *Transfers within One Year:* Do IRA providers refund or waive in whole or part establishment costs, termination costs, maintenance fees or surrender charges for IRAs that are withdrawn or directly rolled over within one year of establishment by the account-holder? Should the Department consider refund or waiver features in determining whether an IRA provider or initial investment qualifies for safe harbor treatment?

9. *Prohibited Transaction Relief:* Is there a need for prohibited transaction relief that would enable a plan sponsor, as the plan administrator, to select itself or an affiliate as the IRA provider, or to choose an initial investment in which it may have an interest? If relief is needed, what safeguards should be imposed with respect to such relief?

10. *Legal Impediments:* What legal impediments are plan administrators

[7] Conforming amendments to Code sections 401(a)(31) and 402(f)(1) were also made by section 657 of EGTRRA.

[8] For example, with respect to individual retirement accounts, 26 CFR 1.408–2(b)(2)(i) states that the trustee of an individual retirement account must be a bank (as defined in § 408(n) of the Code and regulations thereunder) or another person who demonstrates, in the manner described in paragraph (e) of the regulation, to the satisfaction of the Service, that the manner in which the trust will be administered will be consistent with § 408(e) of the Code and with the regulation. With respect to individual retirement annuities, 29 CFR § 1.408–3 describes, among other things, requirements that must be met in order to maintain the tax-qualified status of such annuity arrangements.

likely to encounter in establishing IRAs for automatic rollovers on behalf of separating employees? What legal impediments are financial institutions likely to encounter in designing and marketing IRAs for automatic rollovers?

11. *Disclosure:* Should the regulation impose any additional disclosure requirements on safe harbor IRA providers?

12. *Low-Cost IRAs:* Is there a need for special consideration of IRA providers who provide low-cost IRAs for automatic rollovers? What criteria should be used to demonstrate low-cost or the promotion of the preservation of assets for retirement income by IRA providers? What kinds of low-cost IRA products are available?

13. *Current Practices:* How many qualified retirement plans currently have mandatory distribution provisions? Typically, what are those provisions? How many mandatory distributions occur annually and what is the form of distribution? What are the associated costs?

14. *EGTRRA Provisions:* What additional administrative costs will compliance with the EGTRRA automatic rollover requirements impose on qualified retirement plans and the assets of plan participants?

Impact on Small Entities

In responding to the questions above, please address the anticipated annual impact of any proposals on small business and small plans (plans with fewer than 100 participants).

All submitted responses will be made a part of the record of the proceeding referred to herein and will be available for public disclosure.

Signed at Washington, DC, this 2nd day of January 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–281 Filed 1–6–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Note: The List of Public Laws for the second session of the 107th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the second session of the 107th Congress will appear in the issue of January 31, 2003.

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