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Federal Register

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH36

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –24PHB, and –32PT Revision; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an omission in a final rule appearing in the **Federal Register** on January 7, 2004 (69 FR 849). This action is necessary to add effective dates for Amendments 6 and 7 of Certificate of Compliance 1004.

EFFECTIVE DATE: This final rule became effective January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

As published, the final rule entitled ''List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –24PHB, and –32PT Revision'' (January 7, 2004; 69 FR 849) contains an omission in § 72.214 which need to be added.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. Section 72.214, Certificate of Compliance 1004 is corrected to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–24PHB, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 23rd day of January, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 04–1900 Filed 1–28–04; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–03–001]

RIN No. 1904–AA98

Alternative Fuel Transportation Program; Private and Local Government Fleet Determination

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

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing this final rule pursuant to the Energy Policy Act of 1992 (EPAct). In this final rule, DOE announces that it is not adopting a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles. DOE's decision is based on its findings that such a requirement would not appreciably increase the percentage of alternative fuel and replacement fuel used by motor vehicles

in the United States and thus would make no more than a negligible contribution to the achievement of the replacement fuel goals set forth in EPAct. As a result of these findings, DOE is precluded from promulgating a regulatory requirement for private and local government fleets because such a rule is not ''necessary'' within the meaning of EPAct. The findings and conclusions reached in this document are consistent with those proposed in DOE's March 4, 2003, notice of proposed rulemaking.

EFFECTIVE DATE: This rule is effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9171; regulatory_info@afdc.nrel.gov. Copies of this final rule and supporting documentation for this rulemaking will be placed at the following Web site address: *http://www.ott.doe.gov/epact/private_fleets.shtml.* Interested persons also may access these documents using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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I. Introduction

On March 4, 2003, DOE published a notice of proposed rulemaking (NOPR) announcing its proposed determination not to promulgate regulations requiring private and local government fleets to acquire alternative fueled vehicles (AFVs). *See* 68 FR 10320. In the same notice, DOE also stated that it intended to forgo a determination concerning the achievability of the replacement fuel goals contained in EPAct. The NOPR invited the public to submit written comments and announced that DOE also would hold a hearing to receive public comment. In response, five written comments were submitted, and four statements were given at the public hearing held on May 7, 2003. The final rule issued today summarizes the comments received by DOE, and includes DOE's responses.

This final rule fulfills DOE's obligation under section 507(e) of EPAct (42 U.S.C. 13257(e)) to conduct a rulemaking to determine whether a private and local government fleet rule is necessary. DOE's final rule determines that a regulation requiring private and local government fleets to acquire AFVs is not ''necessary'' and, therefore, cannot be promulgated. The necessity determination is based on DOE's findings that a private and local government fleet vehicle acquisition mandate would not appreciably increase the percentage of alternative fuel or replacement fuel used in motor vehicles in the United States and thus would make no more than a negligible contribution to the achievement of EPAct's existing 2010 replacement fuel goal of 30 percent, or of a revised replacement fuel goal were one adopted.

The finding that the regulation by itself, if adopted, would not result in a meaningful increase in the percentage of alternative fuel or replacement fuel used by motor vehicles is based on the following factors. First and foremost, DOE has concluded that the number of fleets that would be covered by a private and local government fleet mandate and the number of AFV acquisitions that would occur in those fleets as a result of the mandate are too small to cause more than a negligible increase in the percentage of replacement fuel that is used as motor fuel. This is due in part to the limitations EPAct imposes on DOE's authority to promulgate a private and local government fleet AFV acquisition mandate. For example, a private and local government fleet program could only apply to light-duty vehicles (*i.e.*, less than or equal to 8,500 lbs. gross vehicle weight rating (GVWR)) and fleets of sufficient size that are located in certain metropolitan areas, and could not apply to a number of excluded vehicle classes and types (*e.g.*, rental vehicles, emergency vehicles, and vehicles garaged at residences overnight). It should be noted that automakers are already annually manufacturing several times the number of AFVs that would be required under this program. As a result, it is quite possible that a private and local government AFV acquisition mandate would not increase AFV production or sales at all, but rather would simply change the identity of the buyers of the vehicles. Therefore, increases in the production of AFVs due to the requirements of this fleet program are unlikely to occur.

Second, EPAct is structured such that even fleets potentially covered by a fleet mandate may avoid some or all of the acquisition requirements, if they qualify for one of the numerous exemptions set forth in the statute. This situation would still be expected to be an issue even if manufacturers continue to manufacture large numbers of FFVs because, in addition to requiring the right volume of AFVs, implementation of a fleet mandate would require the availability of the right combinations of vehicle models and alternative fuel types to meet fleets' operational needs. Based on experience with its existing fleet programs, DOE has found that the availability of some important vehicle types continues to be limited.

Third, even if DOE promulgated a private and local government fleet AFV acquisition mandate and substantial numbers of AFVs were acquired as a result, there is no assurance that the AFVs acquired by covered fleets would actually use replacement fuel. EPAct does not give DOE authority to require that vehicles acquired by private and local government fleets use any particular fuel. Moreover, DOE's experience with implementation of the Federal fleet, State fleet, and alternative fuel provider fleet programs required by EPAct leads DOE to conclude that given the current alternative fuel infrastructure and high alternative fuel costs relative to conventional motor fuels (despite availability of large total numbers of AFVs), market forces would prevent more than a very small increase in replacement fuel use in covered fleets, even if DOE were to impose a

private and local government fleet AFV vehicle acquisition requirement.

In the March 2003 NOPR, DOE also indicated that it did not intend in this rulemaking to revise the replacement fuel goals in EPAct, which call for replacement fuels to make up 10 percent and 30 percent of the total motor fuel used in the U.S. by 2000 and 2010, respectively. ''Replacement fuel'' is defined by EPAct to mean ''the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers,'' or any other fuel that the Secretary determines ''is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.'' ''Alternative fuel'' is defined to include many of the same types of fuels (such as methanol, ethanol, natural gas, liquid fuels domestically produced from natural gas, hydrogen and electricity), but also includes certain ''mixtures'' of alternative fuels blended with small portions of petroleum-based fuel and ''any other fuel the Secretary [of Energy] determines by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.'' (42 U.S.C. 13211) For example, a mixture of 85 percent methanol and 15 percent gasoline (by volume) would, in its entirety, constitute ''alternative fuel,'' but only the 85 percent that was methanol would constitute ''replacement fuel.'' Also by way of example, gasohol (a fuel blend typically consisting of approximately 10 percent ethanol and 90 percent gasoline by volume), considered as a total fuel blend, would not qualify as an ''alternative fuel,'' but the 10 percent that is ethanol would qualify as ''replacement fuel.''

In carrying out the rulemaking proceeding contemplated in section 507(e) of EPAct (42 U.S.C. 13257(e)), DOE is authorized to evaluate the replacement fuel goals and to modify them if they are not ''practicable and actually achievable * * * through implementation of * * * a fleet requirement program * * *'' and other means. DOE has concluded that it is not legally required to propose and finalize a revision of the replacement fuel goal as part of this rulemaking proceeding because, as indicated in the NOPR and in this final rule, the adoption of a revised goal would not impact its determination that a private and local government rule establishing a section 507(e) ''fleet requirements program'' would not provide any appreciable increase in replacement fuel use and is therefore not ''necessary'' within the meaning of section 507(e) of EPAct. DOE, however, will continue to evaluate this matter and may, if appropriate, modify the goals in the future. In the alternative, assuming arguendo that DOE is required to consider whether to revise the replacement fuel goal, DOE declines to revise for good cause, as explained below.

In addition, apart from the terms of section 507(e), DOE declines to broaden the scope of this rulemaking to encompass goal revision under section 504 because it is not an appropriate time to initiate such a rulemaking. A review of the current status of replacement fuels and alternative fuels reveals that only about 3 percent of total motor fuel use is non-petroleum. The NOPR acknowledged that meeting the 2010 goal of 30 percent would require extraordinary measures. DOE also expressed its belief that EPAct's replacement fuel goal is intended to establish an aggressive aspirational petroleum reduction target for the Federal government and the public. Based on its understanding of the purpose of the goal, DOE stated that it would be inappropriate and ill-advised to propose revising the goal downward at a time when the Administration and Congress are considering (and in some cases, already implementing) the passage of major new energy initiatives. These initiatives, discussed in greater detail in today's final rule, could significantly impact transportation motor fuel use and would have an important influence on any future replacement fuel goal. Based on these factors, DOE has decided that initiating a rulemaking to modify the replacement fuel goal at this time is not appropriate.

The final rule issued today addresses the March 4, 2003, NOPR and the comments received in response to it. It does not summarize the extensive actions that took place prior to March 4, 2003, with respect to this rulemaking. A detailed summary of those rulemaking proceedings is contained in the March 4, 2003, notice. In addition, DOE has established a Web site that contains information relating to this rulemaking activity. Persons interested in learning more about this rulemaking and its history should review the items contained on the Web site: *http://www.ott.doe.gov/epact/private_fleets.shtml.*

II. Discussion of Public Comments

In response to DOE's NOPR, five written comments were submitted, and four statements were given at the public hearing. The American Automobile Leasing Association (AALA), Congressman Joe Barton (R-TX), the Center for Biological Diversity (Center), the Electric Drive Transportation Association (ETDA), and Mr. J.E. Barker (Fleet Manager, City of Gadsden, Alabama), submitted written comments. The following individuals or organizations provided statements at the public hearing: AALA, the National Association of Fleet Administrators (NAFA), and Nic van Vuuren (Hampton Roads Clean City Coordinator). Two individuals presented separate testimonies on behalf of NAFA at the public hearing. The comments and statements are available on DOE's Web site.

These comments and statements can primarily be grouped according to whether they support or oppose DOE's proposed determination regarding adoption of a private and local government fleet mandate and the decision not to revise the replacement fuel goals contained in EPAct. However, the comments submitted by EDTA are not summarized below because they do not speak directly to the issues relevant to a determination under section 507(e) of EPAct. EDTA's comments instead urge DOE to support the adoption of incentives and to develop other programs that encourage the increased use of AFVs and alternative fuels.

A. Comments on Promulgating a Fleet Rule

The coordinator for the Hampton Roads Clean Cities Coalition (Nic van Vuuren), Mr. J.E. Barker (Fleet Manager, City of Gadsden, Alabama), and the Center each submitted comments opposing the proposed determination not to promulgate a new fleet rule. Mr. van Vuuren stated that DOE's NOPR ignores the fact that fleet AFV programs, including a private and local government fleet mandate, were intended to be a ''foundation for voluntary efforts,'' and were not expected by themselves to achieve the petroleum use reduction goals in EPAct. He also stated that the purpose of the replacement fuel goal in EPAct is not to achieve a specific percentage of petroleum replacement, but rather to further petroleum replacement in general. Therefore, he asserted that a private and local government fleet AFV acquisition requirement is necessary because it would contribute generally to petroleum replacement, even if it would not result in the achievement of the levels established in EPAct.

As DOE indicated in the NOPR, the existing fleet programs generate demand

for AFVs and alternative fuels to some extent and, in fact, account for a significant share of the existing market for each. However, EPAct establishes a much higher bar than that before DOE can promulgate a private and local government fleet regulation. Under section 507(e) of EPAct, it is not enough that a private and local government fleet AFV acquisition mandate simply increase the level of alternative or replacement fuel used; rather, in order for a mandate to be promulgated DOE must find that the 2010 goal actually is achieved ''through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs * * *.'' (42 U.S.C. 13257(e)).

As indicated in the NOPR, DOE estimates that implementation of the private and local government fleet AFV acquisition mandate could result in between 0.20–0.80 percent petroleum replacement. (*See* 68 FR 10339.) Several of the comments focused on the fact that the NOPR included an estimate that the private and local government fleet AFV acquisition mandate could potentially replace 1 percent of petroleum motor fuel use. However, the NOPR indicated that the 1 percent estimate overstates the potential impact that the program would have because the 1 percent estimate does not include motor fuel used in heavy-duty vehicles, primarily diesel fuel. If both light- and heavy-duty vehicle motor fuel use is considered, the maximum amount of replacement fuel use expected to result from a private and local government AFV acquisition mandate—even if EPAct required the AFVs to use alternative fuel—is only about 0.70–0.80 percent. While the Center questioned DOE's assertion that it could not require fuel use and expressed the view that DOE's fuel use projections were low, neither the Center nor any other commenter supplied any data or information to demonstrate that DOE's estimate was in error.

In DOE's view, the high relative cost of most alternative fuels makes it unlikely that the adoption of a private and local government fleet regulation would lead other fleets to voluntarily adopt alternative fuel programs or that some local governments might, as the coordinator for Hampton Roads indicated, adopt fuel use programs to compliment the vehicle acquisition requirement. In fact, representatives of fleet associations vigorously contested the idea that their members would voluntarily participate in any programs as long as the threat of future mandates exists.

The Center also submitted comments opposing DOE's proposed determination regarding whether to promulgate a private and local government fleet regulation. The Center commented that an AFV acquisition mandate for private and local government fleets ''will have a profound effect on the market for AFVs and alternative fuels.'' The Center asserted that a private and local government fleet regulation, if adopted, would significantly expand the number of AFVs acquired annually. However, the key consideration with respect to whether a private and local government fleet rule is necessary is not the number of AFVs that are acquired each year, but rather the resulting percentage of motor fuel use that will be replacement fuel. Thus, the number of AFVs that would be acquired under the program is largely irrelevant to the question of whether such a rule is ''necessary'' as that term is used in section 507(e).

The Center also argued that even if the private and local government fleet rule only provided a 1 percent reduction in petroleum consumption, this would not be insignificant given the amount of oil the U.S. consumes. This comment appears to imply that DOE could adopt a private and local government fleet regulation regardless of the actual amount of replacement fuel use that might result, and that a 1 percent reduction would be sufficient to justify the rule. As indicated above, the 1 percent estimate was based on earlier estimates of the potential impact of a private and local government fleet rule and it did not take into account fuel used in heavy-duty vehicles. As explained in the NOPR, DOE's analysis indicates that a private and local government fleet AFV acquisition mandate would replace at best between 0.20–0.80 percent of motor fuel consumption, with the probable amount toward the lower end of this range. (*See* 68 FR 10339.) In DOE's view, this amount of petroleum replacement is not sufficient to warrant such a program, and certainly is not enough to render the program ''necessary'' under the standards set forth in EPAct section 507(e).

The Center also argued that DOE underestimates the potential impact that a private and local government fleet rule would have by incorrectly concluding in the March 4, 2003 NOPR that DOE does not have legal authority to require private and local government fleets to use alternative fuels in their AFVs. In the NOPR, DOE said the following:

The only explicit requirement for fuel use in EPAct is contained in section 501, which extends only to alternative fuel provider fleets. Section 501(a)(4) states that ''vehicles purchased pursuant to this section shall operate solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.'' Section 507, which concerns private and local fleets, does not contain similar provision, nor does it contain a provision either authorizing DOE to mandate fuel use or explicitly prohibiting DOE from mandating fuel use. Therefore, DOE recognizes that it may be argued that section 507's silence leaves the issue of imposing a requirement to use alternative fuel open to DOE rulemaking authority.

However, DOE believes the more appropriate interpretation is that, because Congress specifically required the use of alternative fuel in section 504(a)(4), but not in section 507, the omission was deliberate. As a result, DOE believes that Congress did not intend for DOE, when acting under section 507, to have the authority to promulgate regulations containing a requirement that fleet vehicles use particular types of fuel.

Although this textual analysis is sufficient to support DOE's determination that it should not impose a fuel use requirement under section 507(e) and (g), it also is worthwhile to revisit Congressman Philip Sharp's remarks when he called up the conference report on EPAct for House approval. Congressman Sharp was one of the key architects of EPAct, and the floor manager for the bill in the U.S. House of Representatives. Congressman Sharp said:

> Under section 501, covered persons must actually run their alternative fueled vehicles on alternative fuels when the vehicle is operating in an area where the fuel is available. This requirement was not included in the fleet requirement program under section 507, because the conferees were concerned that the alternative fuel providers might charge unreasonable fuel prices to the fleets that are not alternative fuel providers if such fleets were required to use the alternative fuel.

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

Thus, Congressman Sharp's floor statement is fully consistent with DOE's interpretation that it does not have statutory authority to mandate fuel use under section 507 fleet program, and that in enacting section 507, Congress specifically intended to withhold that authority from the agency.

See 68 FR 10338.

In evaluating the correctness of the foregoing statutory interpretation, DOE notes that the Center in its comments did not respond directly to the points that DOE made in the NOPR. The Center did not contest the relevance of either

DOE's textual comparison of sections 501 and 507 or the legislative history DOE quoted.

The Center instead relies exclusively on the text of section 507(g)(4) as the basis for its argument that DOE has authority under EPAct to require private and local government fleets to use alternative fuels in their AFVs. EPAct section 507(g)(4) reads as follows:

> A vehicle operating only on gasoline that complies with applicable requirements of the Clean Act Air shall not be considered an alternative fueled vehicle under subsection (b) or this subsection, except that the Secretary, as part of the rule under subsection (b) or this subsection, may determine that such vehicle should be treated as an alternative fueled vehicle for purposes of this section, for fleets subject to part C of title II of the Clean Air Act [42 U.S.C. 7581, *et seq.*], taking into consideration the impact on energy security and the goals stated in section 502(a).

(42 U.S.C. 13257(g)(4).) The Center appears to argue that section 507(g)(4) authorizes DOE to prohibit—and that DOE should exercise this authority to prohibit—private and local government fleets from complying with an AFV acquisition mandate by acquiring dual fueled or flexible fueled AFVs if these vehicles are operated only on gasoline (even though dual fueled and flexible fueled vehicles are, by definition, capable of operating on gasoline or diesel).

DOE believes that section 507(g)(4) is best read not as having the meaning ascribed to it by the Center, but rather as authorizing DOE to allow certain vehicles capable of (and thus necessarily) operating only on gasoline to be treated as AFVs for purposes of a fleet program promulgated under EPAct sections 507(b) and 507(g). The text, structure and context of section 507(g)(4) strongly militate against the construction of this section advanced by the Center, and in favor of DOE's construction.

DOE reads section 507(g)(4) as imposing the general rule, which is consistent with EPAct's definition of an AFV, that vehicles capable of and thus necessarily operating only on gasoline ordinarily may not be counted as AFVs. However, section 507(g)(4) allows DOE to treat some such vehicles as AFVs for purposes of a section 507 fleet program if it determines to do so after taking into consideration the impacts on energy security and the goals stated in EPAct section 502(a). Section 507(g)(4) thus was intended to allow DOE to mitigate the effect that a private and local government fleet rule otherwise might have on covered fleets under certain circumstances by expanding, not limiting, the vehicles that could be counted as AFVs for purposes of section 507. Therefore, DOE rejects the Center's argument that DOE mistakenly interpreted its authority under section 507(g)(4), and thus underestimated the amount of replacement fuel use that would result from a private and local government fleet program. If anything, DOE has overestimated resulting replacement fuel use by not accounting for the possibility that certain vehicles capable of operating solely on gasoline could be classified as AFVs for purposes of this program.

The Clean Air Act (CAA) Title II, Part C (the part of the CAA cited in EPAct section 507(g)(4)) addresses clean fuel vehicles and clean fuel fleets. Significantly, vehicles powered only by reformulated gasoline can meet the requirements of this Part, so long as they meet certain emission requirements. However, reformulated gasoline is not listed in EPAct as an alternative fuel, and because it is 80–90 percent petroleum, DOE previously has determined (in the notice of final rulemaking that established 10 CFR Part 490) that it cannot be designated as an ''alternative fuel'' under EPAct because it is ''substantially petroleum.'' Under EPAct section 301(2), DOE has the authority to add fuels to the statutory definition of ''alternative fuel'' only if, among other things, the fuel ''is substantially not petroleum'; the same is true with respect to ''replacement fuel'' under EPAct section 301(14).

DOE interprets section 507(g)(4) as authorizing DOE to allow a vehicle capable of operating only on gasoline and complying with the applicable clean fuel vehicle requirements under Title II of the CAA to be treated as an AFV for purposes of a fleet program under section 507, notwithstanding the exclusion of reformulated gasoline and diesel from EPAct's definition of ''alternative fuel,'' and even though the vehicle otherwise could not be counted as an AFV for purposes of an EPAct fleet program. This interpretation makes sense because, among other reasons, section 507(g)(4) explicitly provides that DOE can make this allowance only for fleets subject to both the EPAct section 507 and CAA Title II fleet programs. Given this interpretation, section 507(g)(4) does not mean, as the Center claims, that DOE has underestimated the amount of replacement fuel use that would result from a private and local government fleet rule. Rather, section 507(g)(4) provides DOE with authority which, if exercised, would reduce, not increase, the amount of replacement fuel use resulting from a private and local government fleet rule. DOE's interpretation is further supported by the fact that section 507(g)(4) appears in section 507 among various other subsections the clear object of which is to relieve the potential burdens that a private and local government fleet rule would place on covered fleets.

As DOE explained above, Congress displayed a willingness and ability to impose a fuel use requirement when and where it intended to do so, as it did in EPAct section 501. EPAct section 507(g)(4) does not contain any such explicit requirement. In light of the explicit terms with which Congress mandated fuel use in section 501, it would be incorrect to stretch the words of section 507(g)(4) to find a fuel use requirement, or an authorization for DOE to impose one.

Moreover, it is difficult to understand how the Center's proposed interpretation even makes sense or could be administered in practice. Dual fueled vehicles are by definition capable of operating on either alternative fuel or on gasoline or diesel; yet at any particular time a dual fueled vehicle is ''operating only'' (to use the words of section 507(g)(4)) on one particular fuel. Thus, if the Center's interpretation of section 507(g)(4) were to be adopted and DOE were to exercise its alleged authority to require covered fleets to use alternative fuels in their AFVs, a dual fueled vehicle would no longer be considered to be an AFV at any particular time it was operating on gasoline. Therefore, again under the Center's interpretation, the section potentially would prohibit (or authorize DOE to prohibit) a vehicle from being considered an AFV during any period in which it was in fact operated on gasoline, but allow the vehicle to be considered an AFV during any period of time when it was operated on an alternative fuel.

This interpretation would make section 507(g)(4) impossible to administer in practice. The Center has not indicated how such a requirement could be enforced, nor how vehicles operating on alternative fuels some of the time and gasoline at other times would be counted. Similarly, the Center did not clarify how a dual fueled vehicle would be counted when it was not operating at all—*i.e.*, when it was being garaged overnight. And since section 507(g)(4) speaks in terms of vehicles operated only on gasoline, its unclear how the Center would propose that DOE treat vehicles operating some or all of the time on diesel. Finally, the Center has not indicated if section 507(g)(4) should be interpreted as calling for the peculiar result of allowing dual fueled vehicles operating

all of the time on diesel to be counted as AFVs, but prohibiting dual fueled vehicles operating all of the time on gasoline from being counted as AFVs. Neither the Center nor any other commenter addressed these issues.

Finally, DOE is of the view that it would be inappropriate, as a matter of policy, to interpret section 507(g)(4) as authorizing DOE to impose a broad restriction on the use of gasoline in dual fueled vehicles for the purposes of a section 507 fleet program. DOE's interpretation of section 507(g)(4) is in keeping with the purpose of section 507, which is to promote acquisition of AFVs as a means of achieving replacement fuel goals while protecting covered fleets from bearing unfair financial burdens. The Center's proposed interpretation would result in imposition on private and local fleet operators of an unfunded mandate in the form of the higher costs of purchasing alternative fuels. Unfunded regulatory mandates of this nature have been disfavored at least since the enactment of the Unfunded Mandates Reform Act of 1995.

In summary, DOE believes its interpretation of section 507(g)(4) is both reasonable and consistent with the other sections of EPAct and with the Clean Air Act, and DOE declines to adopt the Center's proposed interpretation.

Comments supporting DOE's decision not to promulgate a fleet mandate were submitted by the AALA, Congressman Joe Barton (R-TX), and NAFA. AALA and NAFA, which represent hundreds of individual fleets and businesses that would be potentially covered by a private and local government fleet AFV acquisition mandate, agreed with DOE's analysis regarding the impact that a private and local fleet AFV acquisition mandate would have on the achievement of EPAct's replacement fuel goals and supported DOE's determination that such a mandate is not necessary.

AALA expressed the belief that the high cost of AFVs would make leasing costs prohibitive for many companies and that adoption of a fleet mandate would encourage more businesses to move away from leasing vehicles and toward employee-reimbursement programs, where employees operate their own vehicles and are reimbursed for expenses. EPAct excludes from its authorized fleet programs vehicles garaged at personal residences when not in use. Thus, AALA indicated that some fleets might also attempt to avoid having to comply with a private and local government fleet acquisition mandate by moving to employee reimbursement plans. AALA contended that this would not be conducive to cleaner air or energy efficiency because the vehicles owned and operated by employees would generally be less maintained, less fuel efficient, and more polluting than vehicles provided by leasing companies.

NAFA's comments reiterated concerns expressed to DOE in earlier rulemaking proceedings regarding the high cost of AFVs relative to non-AFVs, and the lack of supporting refueling infrastructure. Congressman Joe Barton, the Chairman of the Subcommittee on Energy and Air Quality of the U.S. House of Representatives Committee on Energy and Commerce, also submitted a short statement supporting DOE's proposed decision not to promulgate a fleet mandate and indicating his belief that efforts to increase the use of AFVs should be voluntary and market-oriented.

B. Comments on Revising the Replacement Fuel Goal

The Center comments fault the March 4, 2003, NOPR on the ground that DOE did not propose a revision of the 30 percent replacement fuel goal established for the year 2010 pursuant to sections 507(e) and 504 of EPAct. The Coordinator for the Hampton Roads Clean Cities Coalition also submitted comments arguing that DOE should have proposed a revision to the replacement fuel goals. In DOE's view, if an AFV acquisition mandate on private and local fleets under section 507(e) could make an appreciable contribution to achievement of a replacement fuel goal, there could be an obligation to consider revision of the existing 30 percent goal in this rulemaking. However, as explained in the NOPR and in this final rule (*see* section IV), DOE's analysis indicates that imposing such a vehicle acquisition mandate on private and local fleets would not appreciably increase the demand for and consumption of alternative fuels. Analysis of DOE's limited regulatory authority under title V of EPAct and existing market factors independently warrant a finding that a private and local fleet AFV acquisition mandate under section 507(e) is not ''necessary.'' Therefore, DOE is not required under section 507(e) to go further and revise EPAct replacement fuel goals.

DOE recognizes that section 504 of EPAct provides for ''periodic'' examination and revision of the statutory replacement fuel goals originally established in section 502(b) for reasons other than the requirement to make a necessity determination under section 507(e) of EPAct. More specifically, section 504(a) provides for DOE to publish in the **Federal Register** a notice providing an opportunity for public comment on the results of ''periodic'' examination of the statutory replacement fuel goals. However, as the word ''periodic'' indicates, section 504(a) generally leaves to DOE's discretion how often the statutory goals should be reexamined. More importantly, under section 504(b), DOE may only initiate a rulemaking proceeding to revise the statutory replacement fuel goals ''* * * after analysis of information in connection with carrying out subsection (a) * * *'' of section 504. In DOE's view, the pending legislative and the Administration proposals described in the March 4, 2003, NOPR (*see* 68 FR 10321) make it untimely to carry out a proceeding under subsection (a) of section 504. Furthermore, carrying out such a proceeding and broadening the scope of this rulemaking beyond section 507(e) would have likely delayed the issuance of this final rule.

On the basis of the foregoing, DOE rejects the Center's claim that DOE violated sections 507(e) and 504 of EPAct when it omitted a proposal to revise the statutory replacement fuel goals and declines to expand the scope of this rulemaking beyond issues necessary to comply with section 507(e).

C. Comments on Conducting an Environmental Assessment

The Center argues in its comments that DOE should have conducted an environmental assessment for its NOPR because this rulemaking does not qualify for application of the categorical exemption found in 10 CFR part 1021 at paragraph A.5 of appendix A to subpart D. Paragraph A.5 applies to: ''Rulemaking (interpreting/amending), no change in environmental effect.'' The Center first argues that paragraph A.5 does not apply to this rulemaking because DOE did not propose to ''* * * interpret or amend an existing rule * * *''. In the alternative, the Center argues that this rulemaking does not qualify for application of this categorical exemption because ''* * * DOE's decision not to promulgate a private and municipal fleet rule has a significant detrimental impact on the human environment by withholding action that would reduce petroleum consumption and its attendant environmental damage.''

DOE rejects the Center's first argument because this proceeding is a rulemaking to determine whether to amend 10 CFR part 490 by extending AFV acquisition mandates beyond alternative fuel providers under section

501 of EPAct and State government fleets under section 507(o) of EPAct to include mandates applicable to certain private and local government fleets under section 507(e) of EPAct. In DOE's view, the categorical exemption in paragraph A.5 applies to this rulemaking because DOE construes that exemption to cover rulemakings the purpose of which is to determine whether to amend an existing rule even if, as in this case, the rulemaking subsequently does not result in promulgation of amendatory language.

DOE also rejects the Center's argument that imposition of an AFV acquisition mandate would result in appreciable reductions in petroleum consumption. For the reasons explained in section II.A of this Supplementary Information, DOE has found that such a mandate would not have the effect of appreciably reducing petroleum consumption. On that basis, DOE continues to be of the view that a rulemaking determination for or against amending part 490 to impose such a mandate is environmentally neutral. Moreover, this rulemaking maintains the status quo with respect to private and local government fleets because it does not impose any new obligations or prohibitions on these fleets. For these reasons, an environmental assessment is not necessary.

III. Private and Local Government Fleet Determination

A. Statutory Requirements

Section 507(e) of EPAct directs DOE to determine whether private and local government fleets should be required to acquire AFVs. In this respect, the rulemaking process for a private and local government fleet rule is very different from DOE's previous rulemaking on the State government and alternative fuel provider fleet rule. In the case of the State government and alternative fuel provider fleet rule, DOE was not required to make any findings before it promulgated a fleet rule. (*See* 42 U.S.C. 13251.) The determination of whether to adopt regulations for private and local government fleets, however, is conditional and depends on DOE making several critical findings.

Sections 507(e) and 507(g), read together, authorize DOE to promulgate a private and local government fleet AFV acquisition mandate only if DOE determines such a program is ''necessary.'' Section 507(e) sets forth the requirements for determining whether a private and local government fleet program is ''necessary.'' Section 507(e)(1) states that:

> Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary [of Energy] finds that—(A) the goal of replacement fuel use described in section 502(b)(2)(B), as modified under section 504, is not expected to be actually achieved by 2010, or such other date as is established under section 504, by voluntary means or pursuant to this title or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A), as modified under section 504; and (B) such goal is practicable and actually achievable within periods specified in section 502(b)(2), as modified under section 504, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

(42 U.S.C. 13257(e)(1).)

DOE believes that a determination of whether a private and local government fleet AFV acquisition mandate is ''necessary'' depends, in large part, on the following factors: the amount of replacement fuel use that would result if such a program was adopted (*i.e.*, whether it provides more than a very small percentage contribution to overall U.S. use of replacement fuels in motor vehicles); the level of certainty about the contribution such program might make; whether the replacement fuel use resulting from such a fleet rule could be encouraged through other means, including voluntary measures; and whether certain necessary market conditions (*e.g.*, whether alternative fuel and suitable AFVs are sufficiently available) exist to support a new fleet rule.

B. Rationale for the Private and Local Government Fleet Determination

1. Statutory Limitations

While EPAct authorizes DOE to mandate AFV acquisitions, it severely limits the universe of fleets that would be covered by a private and local government fleet mandate, thus limiting the replacement fuel use that would result from such a program. The definition for ''fleet'' in EPAct section 301(9), (42 U.S.C. 13211(9)), is limited in coverage only to large, centrally fueled fleets located in major metropolitan areas. Only those fleets that operate or own at least 50 or more light-duty vehicles may be considered for coverage. In addition, the definition of ''fleet'' specifically excludes from coverage a number of vehicle types and classes (*e.g.*, rental vehicles, emergency vehicles, demonstration vehicles, vehicles garaged at personal residences at night, etc.). Vehicles that tend to use larger amounts of fuel, such as medium- and heavy-duty vehicles, are also excluded from coverage.

Even for potentially covered fleets, EPAct section 507(i) provides several opportunities for regulatory relief through exemptions for non-availability of appropriate AFVs and alternative fuels. Specifically, any private and local government fleet rule ''shall provide for the prompt exemption'' by DOE of any fleet that demonstrates AFVs ''that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition,'' alternative fuels ''that meet the normal requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to be operated,'' or for government fleets, if the requirements of the mandate ''would pose an unreasonable financial hardship.'' Section 507(g)(3) further reinforces these exemptions: ''Nothing in [Title V of EPAct] shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet.''

Taken together, these statutory exemptions would likely dramatically lower the number of fleets and fleet vehicles subject to a private and local government AFV acquisition mandate. With respect to local government fleets, a number of these otherwise covered fleets might be exempted, for example, in times when local government budgets are particularly stretched and many local governments are required to cut services or raise taxes to maintain existing levels of service, since there will be greater likelihood that petitions for exemption from hard-pressed local governments would be granted. Even if DOE were disinclined to grant such petitions, the prospects that these petitions must be considered would create a ''stop and go'' quality about the local government portion of a private and local government fleet requirement program.

As explained in the NOPR and also in portions of the Supplementary Information for today's final rule, DOE lacks the authority under section 507 to require private and local government fleets to use alternative fuels in their AFVs. DOE's textual analysis of the statute and the legislative history provided in the NOPR (*see* 68 FR 10338) and above support its conclusion regarding its lack of authority to require fuel use. This lack of authority makes it doubtful that a fleet rule would have any appreciable impact on petroleum consumption. Many fleets might be compelled to buy AFVs, but would

operate the AFVs on petroleum-based fuels due to limited nature of the current alternative fuel infrastructure and the oftentimes high relative price of alternative fuels. DOE's experience with fleet programs demonstrates that vehicle acquisition requirements alone result in only a relatively small (in the context of overall U.S. fuel consumption) amount of petroleum replacement.

Finally, DOE is also limited in its authority to affect other market behavior. Section 504(c) precludes DOE from promulgating rules that would:

> * * * mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

(42 U.S.C. 13254(c).)

These limitations in EPAct severely restrict DOE's opportunities to affect the use of replacement fuel, or to establish the market conditions necessary to support a private and local government fleet rule. As a result, it is quite possible that a private and local government AFV acquisition mandate would not increase AFV production or sales at all, but rather would simply change the identity of the buyers of the vehicles.

In addition to all of the provisions discussed, Congress also enacted a petition provision in section 507(n). That section provides:

> As part of the rule promulgated * * * pursuant to subsection * * * (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program * * * nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirements program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(42 U.S.C. 13257(n).)

Thus, even if DOE had authority to require alternative fuel use, the ''normal requirements and practices'' provisions in sections 507(i)(1) and 507(g)(3), described above, and the petition procedure for modification or suspension of a fleet requirement program in section 507(n), would likely result in many fleets potentially covered by the fleet rule being able to obtain relief from the rule's requirements.

Title V of EPAct substantially limits the effectiveness of any private and local government fleet AFV acquisition program that might be promulgated under section 507. The nature of the exemption and petition procedures and the associated regulatory uncertainty undermine the potential effectiveness of a regulatory mandate to purchase significant numbers of AFVs. These factors support DOE's determination that a private and local government fleet program under section 507(g) would make no appreciable contribution to actual achievement of any replacement fuel goal and, therefore, is not ''necessary'' under the section 507(e) standard.

2. Analysis of Potential Replacement Fuel Use

Available analyses further support DOE's conclusion that only a very small amount of alternative or replacement fuel use would result from a private and local government fleet program. *Technical Report 14,* discussed in the NOPR, estimated total fuel use from all EPAct fleet programs to be approximately 1.2 percent of U.S. gasoline use (p. 63, table III–21).[1] DOE's *Section 506 Report*[2] was only slightly more optimistic, indicating that ''[a]lternative fuel use by EPAct covered fleets, even with the contingent mandates for private and local government fleets, is unlikely to provide more than about 1.5 percent replacement fuel use * * * '' *Section 506 Report* at p. 35. In either case, subtracting out the portion of replacement fuel use represented by the existing (Federal, State, and alternative fuel provider) fleet programs would leave the potential private and local government fleet program contribution closer to a maximum of 1 percent. However, both these earlier reports include calculations based only upon the percentage of light-duty gasoline fuel use. For purposes of the goals contained in EPAct, DOE believes that fuel replacement should be considered in the context of all on-highway motor fuel use, including heavy-duty vehicle fuel use, because the goals contained in section 502 of EPAct are to be considered in the context of the ''projected consumption of motor fuel in the United States.'' (42 U.S.C. 13252(b)(2).) This section does not refer only to light-duty fuel use. The figures provided in these earlier reports, when adjusted to reflect the impact on all on-highway motor fuel use, show that a private and local government fleet rule—even with a fuel use requirement, which as noted above DOE does not have the authority to impose—would provide at most on the order of 0.7–0.8 percent motor fuel replacement. After taking into account the fact that DOE has no authority to mandate fuel use, DOE estimates that a private and local government fleet AFV acquisition mandate would likely provide only about 0.2 percent motor fuel replacement.

Both the analyses in *Technical Report 14* and the *Section 506 Report* were conducted before DOE had much experience with implementation and operation of the EPAct fleet programs. DOE's experience with those programs now has shown that the number of fleets originally envisioned to be covered was far larger than the number of fleets covered in actual practice. DOE stated in the March 4, 2003, NOPR its belief that the figures in these reports probably overstate the potential impact of a private and local government fleet rule because they overestimate the total number of AFVs that would be acquired under such a program. This view is supported by analyses contained in a more recent DOE-supported report, *The Alternative Fuel Transition: Results from the TAFV Model of Alternative Fuel Use in Light-Duty Vehicles 1996–2000* (ORNL.TM2000/168) (September 17, 2000) [hereinafter *TAFV Model Report*], *http://pzl1.ed.ornl.gov/tafv99report31a_ornltm.pdf,* which incorporates more realistic assumptions regarding these fleet programs. The *TAFV Model Report* states that, ''In particular, over all of the price scenarios, we find that the [private and local government fleet] rule increases the alternative fuel penetration in 2010 from 0.12% (without the private and local government rule) to, at most, 0.37% [with a private and local government rule] of total fuel sales.'' *TAFV Model Report* at p. 28. Thus, this analysis placed contributions from the private and local government fleet rule

[1] *See* Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis (DOE/PO–0042) (1996).

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

at 0.25 percent. Like *Technical Report 14* and the *Section 506 Report,* these percentages were calculated based on the total fuel sales of the fuel used by light-duty vehicles only. Therefore, the contribution from a potential rule drops below 0.2 percent when evaluated as part of all on-highway motor fuel use.

No commenter presented any persuasive analysis or data to counter or dispute the data and conclusions in *Technical Report 14* or the *Section 506 Report.* The *TAFV Model Report* further supports the conclusions of the earlier reports. Therefore, DOE finds and concludes that a potential private and local fleet program under authority provided to DOE by EPAct section 507 would be expected to contribute, at best, an extremely small amount toward achievement of the replacement fuel goal (below 1 percent and likely below 0.2 percent of all on-highway motor fuel use). Even without the additional statutory limitations described above that EPAct places on such a private and local government fleet mandate, the contribution from such a mandate to the EPAct replacement fuel goals would be very small.

3. Infrastructure and Fuel Availability

Throughout the proceedings associated with this rulemaking (including the advanced notice of proposed rulemaking and public workshops), numerous comments received by DOE expressed concern that the level of alternative fuel infrastructure is not adequate to support a private and local government fleet rule. In the NOPR, DOE noted that alternative fuel provider investments in alternative fuel infrastructure actually have slowed down in recent years. Shortly after EPAct's passage in 1992, a significant number of natural gas and electric utilities entered the transportation fuels market, hoping to market alternative fuels to fleets subject to the Clean Air Act and EPAct. The number of alternative fuel stations, natural gas stations in particular, grew from little more than a handful to several thousand by the end of the 1990s. While the number of ethanol refueling stations has grown over the past few years, the total number of alternative fuel stations appears to have stalled or slightly declined. *See* Department of Energy, Alternative Fuel Data Center, *Refueling Stations (http://www.afdc.doe.gov/refuel/state_tot.shtml)* (Dec. 2002) [hereinafter *AFDC Refueling Stations].* Restructuring in the utility industry has played a significant part in the reduced investment by utilities in alternative fuel stations and therefore in the lack of growth in the total number of alternative fuel stations.

In the NOPR, DOE stated that the ethanol industry has made only a limited investment in building infrastructure for supplying E–85, the fuel used by ethanol FFVs, of which there are several million in service today. The ethanol industry has primarily focused its attention on supplying the gasohol and gasoline-oxygenate market. Consequently, today there are only approximately 180 fueling outlets nationwide that provide E–85. *See AFDC Refueling Stations (http://www.afdc.doe.gov/refueling.html).* Some efforts are underway to expand the number of E–85 refueling sites. However, the number of E–85 stations would have to grow significantly to have a measurable impact on overall U.S. motor fuel consumption.

As DOE explained in the NOPR, major energy suppliers, principally oil companies, have largely been unwilling to date to invest in the alternative fuels market (or they have actively opposed it) and instead have primarily focused their attention on ensuring that gasoline and diesel fuels meet current and future environmental regulations. No commenter disputed the discussion in the NOPR regarding this issue. Thus, DOE does not expect that the major oil and fuel retailers would install the infrastructure necessary to support alternative fuel use by AFVs were DOE to promulgate a private and local government fleet mandate, given the extremely small amount of replacement fuel use that likely would result from such a mandate; certainly that infrastructure is not in place now. This limited infrastructure would likely result in exemption requests and petitions to suspend any fleet requirement program DOE might impose under section 507(e), and DOE possibly granting these requests.

4. AFV Availability

Automakers have for several years now offered some variety of AFVs, including passenger cars, light-duty pickup trucks and vans. The availability of these vehicles stands in stark contrast to when EPAct was enacted. In 1992, there were virtually no original equipment manufacturer (OEM) vehicles available that operated on alternative fuel. Consumers and fleets had to have existing gasoline vehicles converted by aftermarket shops if they wanted AFVs. The AFVs that are available today are built by auto manufacturers for two primary purposes: (1) To provide credits to automakers that can be used to meet the corporate average fuel economy (CAFE) standards; and, (2) to meet the needs of the fleets currently subject to fleet mandates.

Automobile manufacturers are awarded CAFE credits as an incentive to develop AFVs. The sale of these vehicles in turn could potentially lead to the development of infrastructure to support alternative fuel use. Data available to DOE indicates that manufacturers currently offer over a million new flexible fuel vehicles (FFVs) each year (at virtually no incremental purchase price). Other AFVs (such as gaseous fuel vehicles) are available in significantly lower numbers, and generally combine for a total of less than 10,000 vehicles per year (often at incremental purchase prices of approximately $2000 to $8000).

It should be noted that the total number of AFVs available each year is several times the number projected to be required to meet the annual acquisition requirements of a private and local government AFV fleet program. We believe such a fleet program would be unlikely to result in large numbers of additional AFVs being produced because most AFVs are manufactured as a result of the CAFE incentive provisions contained in the Alternative Motor Fuels Act of 1988 (AMFA) (49 U.S.C. 32905), and the ability to earn additional credits is constrained. Therefore, DOE expects that, for the most part, imposition of a private and local government AFV fleet program would largely result in a shift of these already-available vehicles to fleets covered under this program. No commenter explained why a different outcome might reasonably be expected.

DOE is also concerned that if it were to adopt a requirement for private and local government fleets to acquire AFVs, there may not necessarily be the right mix of vehicle types required by fleets. DOE explained this concern in the NOPR and no commenter offered any information or explanation why DOE's concern was not well-grounded. *See* 68 FR at 10340. The number of AFVs that likely would be acquired under a private and local government fleet mandate are, in DOE's view and based on the comments it has received, insufficient to create the market demand that would cause manufacturers to modify their product plans and build the range of models and fuel type combinations required by fleets. It should be noted that section 504(c) of EPAct (42 U.S.C. 13254(c)) expressly prohibits DOE from mandating the production of AFVs or to specify the types of AFVs that are made available.

Under the existing State government and alternative fuel provider fleet programs, DOE has been obliged to provide a number of exemptions to fleets that were unable to acquire AFVs that meet their ''normal requirements and practices.'' Unless automakers significantly expand their current offerings of AFVs, DOE likely would be forced to process and approve thousands of exemption requests each year made by private and local government fleets, thus further watering down the effect a private and local government fleet mandate would have in causing use of alternative fuels.

5. Alternative Fuel Costs and Alternative Fuel Use

At the present time, the cost of some alternative fuels (such as biofuels) exceeds the cost of conventional motor fuel, and it is reasonable to assume that, absent changes in technology, in the supply of petroleum, or in policy as established by law, this price differential will continue and will influence fleet owners and operators for the foreseeable future. DOE set forth this assumption in the NOPR, and no commenters offered any evidence or persuasive arguments to dispute it. *See* 68 FR at 10340. The likely effect of the price differential is predictable in light of DOE's experience in administering the State government fleet requirement program under section 507(o) of EPAct. Most State government fleets are acquiring significant numbers of FFVs and operating them lawfully using conventional motor fuels. Although this practice in part may be a function of lack of ready access to sufficient alternative fuel infrastructure, the fuel cost differential of ethanol (in some geographic areas) is likely a contributing factor.

6. Summary of Determination

DOE determines that a private and local government fleet AFV acquisition mandate under sections 507(e) and (g) of EPAct is not ''necessary,'' and, therefore, DOE is precluded from imposing it. Such a mandate would make no appreciable contribution (from less than 0.2 percent to a maximum of 0.8 percent of on-highway motor fuel use) toward achievement of the 2010 replacement fuel goal in EPAct section 502 or a revised goal, and even this extremely small contribution is highly uncertain.

As a result, DOE cannot make the determinations set forth in section 507(e), both of which must be made in the affirmative before a private and local government fleet requirement program can be determined to be ''necessary'' and thus implemented. DOE cannot determine that the 2010 replacement fuel goal in EPAct (or a revised goal) will not be achieved ''without such a fleet requirement program'' because the existence of the fleet rule would have no appreciable impact (indeed almost no measurable impact at all) on the goal's achievement. For the same reason, DOE cannot determine that the replacement fuel goal can be achieved ''through implementation of such a fleet requirement program'' in combination with other means.

DOE has come to these conclusions for all of the reasons explained above. To summarize, there are the limitations in EPAct itself, which include: (1) Limitations on the coverage of a private and local government fleet requirement program to only certain light-duty vehicle fleets; (2) procedures allowing case-by-case exemptions; and (3) DOE's lack of authority to require alternative or replacement fuel use. In addition, even if DOE imposed AFV acquisition requirements, market conditions will encourage covered fleets to file petitions seeking modification and/or suspension of the entire fleet requirement program and/or its application to specific fleets and vehicles. Those conditions, which are likely to persist, are: (1) Lack of ready access to sufficient alternative fuel infrastructure; (2) limited availability of suitable AFVs; and (3) high alternative fuel costs (for certain fuels) relative to the costs of conventional motor fuels.

On the basis of the foregoing, DOE today determines that a private and local government fleet requirement program is not ''necessary'' under the standards set forth in EPAct section 507(e) and, therefore, will not be promulgated.

C. Determination for Fleet Requirements Covering Urban Transit Bus and Law Enforcement Vehicles

Section 507(k)(1) of EPAct provides in relevant part: ''If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in the *fleet requirement program established under subsection (g)* would contribute to achieving the [replacement fuel] goal described in section 502(b)(2)(B) * * * and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program * * *. '' (emphasis added). Section 507(k)(2) contains similar language with regard to new urban buses (42 U.S.C. 13257(k)(1) and (2)). Both section 507(k)(1) and 507(k)(2) limit DOE to only one rulemaking opportunity for implementing requirements for law enforcement and urban bus fleets.

As discussed in the NOPR, DOE considered interpreting section 507(k) to mean that law enforcement vehicle fleets and urban buses could be considered as part of the determination process under sections 507(e) and (g) as to whether a private and local government fleet AFV acquisition mandate program is ''necessary.'' DOE, however, believes that EPAct only allows it to consider whether law enforcement fleets and urban buses should be covered by a fleet acquisition mandate after DOE has completed the rulemaking contemplated by sections 507(e) and (g), and only if DOE has determined that a private and local government fleet acquisition program is ''necessary.'' DOE does not believe that these programs can be considered as part of the rulemaking that section 507(e) directs DOE to conduct regarding private and local government fleets. This view is supported by the fact that the provisions relating to law enforcement vehicles and urban buses require DOE to conduct separate rulemakings to consider whether to adopt these programs.

DOE further interprets EPAct to prohibit DOE from considering law enforcement vehicle fleets when making the ''necessary'' determination under sections 507(e) and (g) because such fleets are specifically excluded from the statutory definition of the term ''fleet'' (42 U.S.C. 13211(9)). Similarly, it is DOE's view that EPAct prohibits DOE from considering urban buses when making the ''necessary'' determination under sections 507(e) and (g) because the statutory definition of the term ''fleet'' is limited to ''light-duty vehicles'' which are vehicles no more than 8,500 lbs. GVWR, and under the definition of ''urban bus'' referenced in section 507(k) and contained in 40 CFR 86.093–2, most urban buses would not qualify as light-duty vehicles.

No commenter presented any persuasive argument as to why DOE's interpretation of sections 507(k), 507(e) and 507(g) as discussed in this section C of this Supplementary Information is incorrect. Thus, since DOE is not adopting a private and local government fleet requirement, it also is precluded from adopting a fleet requirement for law enforcement vehicles and urban buses.

IV. Replacement Fuel Goal

DOE has decided not to modify the 2010 replacement fuel goal of 30 percent in this final rule. As noted earlier, the process of determining whether to adopt

an AFV acquisition mandate for private and local government fleets depends on whether such a rule is ''necessary'' to achieve EPAct's petroleum replacement fuel goals. As part of the process of evaluating whether to propose AFV acquisition mandates for private and local government fleets pursuant to EPAct section 507, DOE reviewed the replacement fuel goals in EPAct section 502 and considered whether to revise them, but decided for several reasons that it would not propose any such modifications.

DOE has decided not to propose or finalize any revisions to the replacement fuel goal because, first, DOE does not believe that EPAct requires it to revise the petroleum replacement fuel goal in order to determine whether a private and local government fleet rule is ''necessary.'' Revising the goal as part of this rulemaking would serve no purpose because, as indicated in the NOPR and in this final rule, the adoption of a revised goal would not impact DOE's determination that a private and local government fleet rule provides no appreciable increase in replacement fuel use. In addition, the limited regulatory authority under Title V of EPAct and existing market factors independently warrant a finding that an AFV acquisition mandate under section 507(e) is not ''necessary.'' Therefore, DOE is not required under section 507(e) to revise the EPAct 2010 percent replacement fuel goal, since it would not influence DOE's decision regarding whether or not to implement a private and local government fleet regulation.

Second, DOE believes that revising the 2010 replacement fuel goal at this time would not serve the aims of EPAct to promote or encourage the use of replacement fuels. Congress created by statute (in EPAct section 502(b)(2)) an initial national goal of using replacement fuels for at least 10 percent of motor fuel used in the United States by 2000, and a long-term goal of at least 30 percent by 2010, on a petroleum fuel energy equivalent basis. Neither the text of EPAct nor the legislative history explains why Congress chose these particular goals and dates. Nor does the text or legislative history provide any analysis supporting them. However, and in light of the overall purposes of EPAct, DOE believes that Congress set these particular goals to establish aggressive aspirational petroleum reduction targets for the Federal government and the public. Congress apparently intended to encourage action that would aggressively advance the availability and use of replacement fuels. DOE believes that the goals in EPAct were intended to encourage actions that would lead to significant increases in replacement fuel use.

Since EPAct's enactment in late 1992, the Federal government has implemented a number of regulatory and voluntary programs in an effort to increase the use and availability of replacement fuels. While these programs have increased the availability of AFVs and the use of alternative fuels and replacement fuels, these programs have not had the desired effect of greatly increasing the availability or use of alternative and replacement fuels, or of causing the use of replacement fuels to become a viable alternative, on a large-scale basis, to the use of petroleum-based fuels in vehicles. The result is that although the use of replacement and alternative fuels has increased since 1992, the overall use of these fuels relative to total petroleum consumption remains relatively small. In 1992, replacement fuels accounted for slightly less than 2 percent of total motor fuel consumption; by 2001, replacement fuels accounted for less than 3 percent. *See Transportation Fuels 2000* at Table 10. Thus, to date, very little progress has been made toward achieving the aggressive replacement fuel goals established by EPAct and little progress will be made in the future without major new initiatives.

At the same time, DOE takes note of the fact that Congress is currently considering comprehensive legislation that may significantly affect our Nation's energy future and may bear importantly not only on the achievability of the current goals, but also on what any potential revised goals might be. Moreover, the President and DOE have proposed bold initiatives to dramatically increase the availability, use and commercial viability of replacement fuels in the transportation sector. DOE's transportation efforts are focused on the goal of developing advanced motor vehicle technologies (such as hydrogen-based fuel cells) that could someday significantly offset demand for petroleum motor fuels. These efforts also support the shorter-term objective of more efficiently utilizing existing petroleum resources. These efforts, if fully supported with necessary enabling legislation and funding as DOE has proposed, offer the potential to achieve the long-term EPAct goal of replacing petroleum as the primary transportation fuel.

In light of the momentum that these various efforts are gaining; in light of what DOE understands to be the principal purpose of EPAct's replacement goals in section 502(b)(2)—to encourage policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the possibility of new legislation that would have significant bearing on these issues, DOE has concluded that it should not make a determination under EPAct concerning the achievability of the 2010 goal at this time. Therefore, DOE is not modifying the 2010 replacement fuel goal set forth in EPAct section 502(b)(2). DOE will continue to evaluate this issue and may in the future, if it considers it appropriate, review and modify the 2010 replacement fuel goal pursuant to its authority in EPAct Title V.

V. Review Under Executive Order 12988

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

VI. Review Under Executive Order 12866

This regulatory action has been determined to be a ''significant

regulatory action'' under Executive Order 12866, Regulatory Planning and Review. *See* 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 63461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE's negative determination under EPAct section 507(e) will not impose compliance costs on small entities. On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

VIII. Review Under the Paperwork Reduction Act

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

IX. Review Under the National Environmental Policy Act

This rule determines that a regulatory requirement for the owners and operators of certain private and local government light-duty vehicle fleets to acquire AFVs would make no appreciable contribution to actual achievement of the replacement fuel goal in EPAct or a revised goal, and, therefore, is not ''necessary'' under EPAct section 507(e). The negative determination regarding the necessity for a private and local government fleet requirement program will not require any government entity or any member of the public to act or to refrain from acting. Accordingly, for this reason and reasons discussed in section II.C of the Supplementary Information, DOE has determined that its determination is covered under the Categorical Exclusion found at paragraph A.5 of appendix A to subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

X. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's determination and determines that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Review of Impact on State Governments—Economic Impact on States

Section 1(b)(9) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), established the following principle for agencies to follow in rulemakings: ''Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions.''

Because DOE has determined that a private and local government fleet AFV program is not ''necessary'' under section 507(e) and, therefore, is not promulgating such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPAct fleet program is unchanged by this action. Prior to issuance of its NOPR, DOE sought and considered the views of State and local officials. The March 4 NOPR contains a full discussion of these consultations. *See* 68 FR 10320.

XII. Review Under Unfunded Mandates Reform Act of 1995

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

XIII. Review Under Treasury and General Government Appropriations Act, 1999

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

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

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

reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

XV. Review Under Executive Order 13175

Under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), 65 FR 67249 (November 9, 2000), DOE is required to consult with Indian tribal officials in development of regulatory policies that have tribal implications. Today's action would not have such implications. Accordingly, Executive Order 13175 does not apply to this final rule.

XVI. Review Under Executive Order 13045

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), 62 FR 19885 (April 23, 1997), contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. Today's action is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

XVII. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001), requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not ''necessary'' under EPAct section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's negative determination is a significant regulatory action, the finalization of this determination will not have a significant adverse impact on the supply, distribution, or use of energy. Consequently, DOE has concluded there is no need for a Statement of Energy Effects.

XVIII. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

XIX. Approval by the Office of the Secretary

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

Issued in Washington, DC, on January 23, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–1923 Filed 1–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–28–AD; Amendment 39–13438; AD 2004–02–03]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) model helicopters that requires modifying each passenger compartment sliding door (door) by applying a kit to replace the levers and links. This amendment is prompted by instances of a door inadvertently opening during flight due to the unstable configuration of the door. The actions specified by this AD are intended to prevent the inadvertent opening of a door during flight and loss of a passenger or other objects from the cabin.

DATES: Effective March 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified Agusta model helicopters was published in the **Federal Register** on October 22, 2003 (68 FR 60300). That action proposed to require modifying the doors by installing a new lever and link and other hardware contained in kits, part number (P/N) 109–0823–25–101 (left hand) and P/N 109–0823–25–102 (right hand).

The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises that the doors should be modified.

Agusta has issued Alert Bollettino Tecnico No. 109EP–33, dated March 19, 2003 (ABT), which specifies modifying the opening and closing mechanism of the passenger compartment sliding doors by installing a new lever and a new link to avoid the possibility of the mechanism not reaching the stowed position. Agusta reports the accidental opening during flight of one of the doors, on a few helicopters, without any harm to the passengers. ENAC classified this ABT as mandatory and issued AD No. 2003–109, dated March 27, 2003, to ensure the continued airworthiness of these helicopters in Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 34 helicopters of U.S. registry, and the required actions will take approximately 4 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $3000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $110,840 ($3260 per helicopter). However Agusta states in its ABT that it will supply the parts at no cost and will reimburse up to 4 work hours to modify the doors at a fixed rate of $40. Assuming this warranty coverage, the estimated total cost impact of this AD on U.S. operators is $3400 ($100 per helicopter).

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–02–03 Agusta S.p.A.: Amendment 39–13438. Docket No. 2003–SW–28–AD.

Applicability: Model A109E helicopters, up to and including serial number (S/N) 11150 with Pratt & Whitney Canada, Inc. PW206C engines, and S/N 11501 through 11509 with Turbomeca Arrius TM2K1 engines, with a passenger compartment sliding door (door), part number (P/N) 109–0360–48–101 (left-hand (LH)), P/N 109–0360–48–102 (right-hand (RH)), P/N 109–0360–48–201 (LH), or P/N 109–0360–48–202 (RH), installed, certificated in any category.

Compliance: Required within 90 days, unless accomplished previously.

To prevent the inadvertent opening of a door and loss of a passenger or other objects from the cabin, accomplish the following:

(a) Modify the doors by replacing levers, P/N 109–0362–30–103 (LH) and P/N 109–0362–30–104 (RH), and links , P/N 109–0362–05–101; with levers P/N 109–0362–30–109 (LH) and P/N 109–0362–30–110 (RH), and links, P/N 109–0362–05–105, and the hardware contained in kits, P/N 109–0823–25–101 (LH) and P/N 109–0823–25–102 (RH) in accordance with the Compliance Instructions in Agusta Bollettino Tecnico No. 109 EP–33, dated March 19, 2003.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) The modification shall be done in accordance with Agusta Bollettino Tecnico No. 109 EP–33, dated March 19, 2003. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on March 4, 2004.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2003–109, dated March 27, 2003.

Issued in Fort Worth, Texas, on January 16, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–1686 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–276–AD; Amendment 39–13439; AD 2004–02–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 900EX series airplanes. This action requires revising the airplane flight manual to advise the flightcrew about limitations on operating in icing conditions, and to require that the airplane be operated per these limitations. This action is necessary to ensure that the flightcrew is aware of the potential for reductions in climb performance in certain situations while operating in icing conditions, and the actions they must take to avoid this condition, which could result in an inability to avoid low-level obstacles during takeoff and consequent controlled flight into terrain. This action is intended to address the identified unsafe condition.

DATES: Effective February 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2004.

Comments for inclusion in the Rules Docket must be received on or before March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2003–NM–276–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Dassault Model Falcon 900EX series airplanes. The DGAC

advises that a design review identified a situation in which use of bleed air during icing conditions, in a situation in which one engine on the airplane is not operating, could cause the remaining engines to exceed the maximum Inter-stage Turbine Temperature (ITT). This could induce a reduction in engine thrust. This condition, if not corrected, could result in a reduction in the airplane's climb performance, leading to an inability to avoid low-level obstacles during takeoff, and consequent controlled flight into terrain.

Explanation of Relevant Service Information

Dassault has issued the following Temporary Changes (TCs) to the Falcon 900EX Airplane Flight Manuals (AFM), Documents DTM561 and DGT84972:

- TC 63 to the Falcon 900EX AFM, Document DTM561; and TC 2 to the Falcon 900EX AFM, Document DGT84972; both dated December 17, 2003; which describe revisions to the Limitations, Performance, Emergency Procedures, and Abnormal Procedures sections of the AFM. The revisions to the Limitations and Performance sections advise the flightcrew of reductions in performance during operations in icing conditions. The revisions to the Emergency Procedures and Abnormal Procedures sections advise the flightcrew of the need to monitor ITT and make necessary adjustments in certain situations involving engine failure during icing conditions.
- TC 65 to the Falcon 900EX AFM, Document DTM561; and TC 5 to the Falcon 900EX AFM, Document DGT84972; both dated December 17, 2003; which describe revisions to the Performance section of the AFM to advise the flightcrew of reductions in expected performance during operations in icing conditions.
- Supplement 19 D, Revision 2, to the Falcon 900EX AFM, Document DTM561, dated December 17, 2003, which describes a revision to the Supplements section of the AFM for certain airplanes operating with certain software or modifications. This revision advises of limitations on operations with the anti-ice system activated.

The DGAC classified these TCs to the AFMs as mandatory and issued French emergency airworthiness directive U F–2003–464 to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that the flightcrew is aware of the potential for reductions in climb performance in certain situations while operating in icing conditions, and the actions they must take to avoid this condition, which could result in an inability to avoid low-level obstacles during takeoff and consequent controlled flight into terrain. This AD requires revising the AFM to advise the flightcrew about limitations on operating in icing conditions, and to require that the airplane be operated per these limitations.

Difference Between French Emergency Airworthiness Directive and This AD

For the AFM revisions, the French emergency airworthiness directive specifies a compliance time of before the next flight upon receipt of the emergency airworthiness directive. This AD provides a compliance time of 7 days after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered the DGAC's recommendation, as well as the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a 7-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–276–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant

regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–02–04 Dassault Aviation: Amendment 39–13439. Docket 2003–NM–276–AD.

Applicability: All Model Falcon 900EX series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is aware of the potential for reductions in climb performance in certain situations while operating in icing conditions, and the actions they must take to avoid this condition, which could result in an inability to avoid low-level obstacles during takeoff and consequent controlled flight into terrain, accomplish the following:

Airplane Flight Manual (AFM) Revisions

(a) Within 7 days after the effective date of this AD: Revise the Falcon 900EX AFM by accomplishing paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, except as provided by paragraph (b) of this AD. Thereafter, operate the airplane per the limitations specified in these AFM revisions.

(1) Revise the Limitations, Performance, Emergency Procedures, and Abnormal Procedures sections of the AFM to include the information in Temporary Change (TC) 63 to the Falcon 900EX AFM, Document DTM561; or TC 2 to the Falcon 900EX AFM, Document DGT84972; both dated December 17, 2003; as applicable.

(2) Revise the Performance section of the AFM to include the information in TC 65 to the Falcon 900EX AFM, Document DTM561; or TC 5 to the Falcon 900EX AFM, Document DGT84972; both dated December 17, 2003; as applicable.

(3) Revise the Supplements section of the AFM to include the information in Supplement 19 D, Revision 2, to the Falcon 900EX AFM, Document DTM561, dated December 17, 2003.

Note 1: When information identical to that in the applicable TCs specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the TCs may be removed from the AFM.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Temporary Change 2 to the Falcon 900EX Airplane Flight Manual, Document DGT84972, dated December 17, 2003, and Temporary Change 5 to the Falcon 900EX Airplane Flight Manual, Document DGT84972, dated December 17, 2003; or Temporary Change 63 to the Falcon 900EX Airplane Flight Manual, Document DTM561, dated December 17, 2003, and Temporary Change 65 to the Falcon 900EX Airplane Flight Manual, Document DTM561, dated December 17, 2003, and Supplement 19 D, Revision 2, to the Falcon 900EX Airplane Flight Manual, Document DTM561, dated December 17, 2003; as applicable. (Only the first page of the Temporary Changes contain the document date; no other page of those documents contains this information.) Supplement 19 D, Revision 2, to the Falcon 900EX Airplane Flight Manual, DTM561, dated December 17, 2003, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 5, 8 ..	Revision 1	June 6, 2003.
2, 4	Revision 2	December 17, 2003.
3, 6, 7, 9, 10.	Original	May 4, 2001.

(The revision dates are only located in the Log of Pages and Revisions listed on page 2 of this Supplement; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French emergency airworthiness directive U F–2003–464.

Effective Date

(d) This amendment becomes effective on February 13, 2004.

Issued in Renton, Washington, on January 20, 2004.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1770 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–262–AD; Amendment 39–13442; AD 2004–02–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This action requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the aircraft maintenance manual by incorporating procedures for a functional test of the pilot input lever of the pitch feel simulator unit. This action also requires a functional test of the pilot input lever of the pitch feel simulator unit, and corrective action if necessary. This action is necessary to prevent undetected failure of the shear pin of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2004.

Comments for inclusion in the Rules Docket must be received on or before March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2003–NM–262–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11581; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that the shear pin located in the input lever of two pitch feel simulator (PFS) units failed due to fatigue. One pin failed during endurance rig testing of a Model CL–600–2B19 airplane, and another failed in service. Failure of the shear pin is not always detectable by the flightcrew during normal operation of the airplane. Undetected failure of the shear pin of both PFS units simultaneously, if not corrected, could result in loss of pitch feel forces and consequent loss of control of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Temporary Revision (TR) 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.'' The TR describes procedures for a functional test of the pilot input lever of the PFS unit. Accomplishment of the action specified in the service information is intended to adequately address the identified unsafe condition. TCCA classified these actions as mandatory and issued Canadian airworthiness directive CF–2003–26, dated November 14, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent undetected failure of the shear pin of the PFS unit, which could result in loss of pitch feel forces and consequent loss of control of the airplane. This AD requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the aircraft maintenance manual by incorporating procedures for a functional test of the pilot input lever of the PFS unit. This AD also requires a functional test of the pilot input lever of the PFS unit, and corrective action if necessary. The actions are required to be accomplished in accordance with the service information described previously. This AD also includes a reporting requirement.

Interim Action

This AD is considered to be interim action. The reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of failures of the shear pins of the PFS units, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–262–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–02–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–13442. Docket 2003–NM–262–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7999 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected failure of the shear pin of both pitch feel simulator (PFS) units simultaneously, which could result in loss of pitch feel forces and consequent loss of control of the airplane, accomplish the following:

Revise Airworthiness Limitations (AWL) Section of Aircraft Maintenance Manual

(a) Within 14 days after the effective date of this AD: Revise the airworthiness limitations (AWL) section of the Instructions for Continued Airworthiness of the aircraft maintenance manual by incorporating the functional check of the PFS pilot input lever, Task R27–31–A024–01, as specified in Bombardier Temporary Revision (TR) 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' into the AWL section. When this information is included in the general revisions of the maintenance manual, the TR may be removed.

Functional Test

(b) Perform a functional test of the pilot input lever of the PFS unit before the accumulation of 4,000 total flight hours, or within 60 days after the effective date of this AD, whichever is later. Do the test per Task R27–31–A024–01 of Bombardier TR 2B–1784, dated October 24, 2003. If any unit fails during the functional test, replace with a new or serviceable part per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or TCCA (or its delegated agent).

Reporting Requirement

(c) Submit a report of any failure that occurs during any functional test to Bombardier, Inc., Canadair, Aerospace Group, Technical Help Desk, John Kahn, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; fax (514) 855–7708, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the test was done after the effective date of this AD: Submit the report within 14 days after the inspection.

(2) If the test was done before the effective date of this AD: Submit the report within 14 days after the effective date of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–26, dated November 14, 2003.

Effective Date

(f) This amendment becomes effective on February 13, 2004.

Issued in Renton, Washington, on January 20, 2004.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1769 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA44

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations; Definition of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule; correction.

SUMMARY: FinCEN published in the **Federal Register** of November 20, 2003, a document (68 FR 65392) finalizing a rule defining futures commission merchants and introducing brokers in commodities and requiring these financial institutions to report suspicious transactions. The document contained an inadvertent typographical error deleting several words from an existing definition of ''transaction'' in the general definitional section of the Bank Secrecy Act regulations.

DATES: This correction is effective December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Alma Angotti, Senior Enforcement Attorney, Office of the Chief Counsel (FinCEN), (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections provides guidance under 31 CFR part 103.

Need for Correction

As published, the final rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

In final rule FR Doc. 03–28991, published on November 20, 2003 (68 FR 65392), make the following correction.

§ 103.11 Corrected

On page 65398, in column 1, correct paragraph (ii)(1) by adding the words ''purchase or redemption of casino chips or tokens, or other gaming instruments'' after the words ''purchase or redemption of any money order, payment or order for any money remittance or transfer,'.

Dated: January 21, 2004.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network, Federal Register Liaison.

[FR Doc. 04–1845 Filed 1–28–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2004–16938]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations and Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between October 1, 2003 and December 31, 2003, that were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice is effective January 29, 2004.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LT Jeff Bray, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these special local regulations, security zones, safety zones and temporary drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, security zones and drawbridge operation regulations listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from October 1, 2003, through December 31, 2003, unless otherwise indicated.

Dated: January 22, 2004

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—4TH QUARTER 2003

COTP Docket	Location	Type	Effective date
Charleston 03–169	Charleston, SC	Safety Zone	12/6/2003
Corpus Christi 03–007	Ingleside, TX	Safety Zone	11/2/2003
Corpus Christi 03–008	Port Aransas, TX	Safety Zone	11/6/2003
Jacksonville 03–146	St. Johns River, M 161.1 Volusia County, FL	Safety Zone	10/23/2003
Jacksonville 03–149	Atlantic Ocean, Jacksonville, FL	Safety Zone	10/23/2003
Jacksonville 03–156	Atlantic Ocean, Daytona Beach, FL	Safety Zone	11/7/2003
Jacksonville 03–161	Volusia County, FL	Safety Zone	11/24/2003
Jacksonville 03–162	Lake Eustis, Eustis, FL	Safety Zone	11/28/2003
Jacksonville 03–163	St. Johns River, Jacksonville, FL	Safety Zone	11/29/2003
Jacksonville 03–164	West Lake Tohopekaliga, Kissimmee, FL	Safety Zone	12/13/2003
Jacksonville 03–170	Lake Eustis, Eustis, FL	Safety Zone	12/5/2003

COTP QUARTERLY REPORT—4TH QUARTER 2003—Continued

COTP Docket	Location	Type	Effective date
LA–LB 03–010	Long Beach, CA	Safety Zone	10/11/2003
Louisville 03–012	Ohio River, M 602.0 TO 606.0 Louisville, KY	Safety Zone	10/14/2003
Louisville 03–013	Louisville, KY	Safety Zone	10/3/2003
Memphis 03–003	Rosedale, MS	Safety Zone	10/10/2003
Memphis 03–004	Osceloa, AR	Safety Zone	10/15/2003
Memphis 03–005	Osceola, AR	Safety Zone	11/2/2003
Miami 03–150	Columbus Day Regatta, Bicayne Bay, Miami, FL	Special Local Reg	10/11/2003
Miami 03–158	Port of Miami, Miami, FL	Security Zone	11/19/2003
Miami 03–160	Boca Raton, FL	Security Zone	11/19/2003
Morgan City 03–006	Louisa, LA	Safety Zone	10/23/2003
Morgan City 03–008	Amelia, LA	Safety Zone	11/6/2003
Morgan City 03–012	Amelia, LA	Safety Zone	11/18/2003
Morgan City 03–013	Morgan City, LA	Safety Zone	12/2/2003
Morgan City 03–014	Berwick, LA	Security Zone	12/9/2003
Pittsburgh 03–023	Pittsburgh, PA	Safety Zone	10/4/2003
Pittsburgh 03–024	Pittsburgh, PA	Safety Zone	10/3/2003
Pittsburgh 03–025	Pittsburgh, PA	Safety Zone	10/18/2003
Pittsburgh 03–026	Star City, WV	Safety Zone	10/31/2003
Pittsburgh 03–027	Star City, WV	Safety Zone	11/3/2003
Pittsburgh 03–028	Star City, WV	Safety Zone	11/7/2003
Pittsburgh 03–031	Pittsburgh, PA	Security Zone	12/2/2003
Port Arthur 03–020	Neches River, Beaumont, TX	Safety Zone	10/10/2003
Port Arthur 03–023	Beaumont, TX	Safety Zone	11/10/2003
San Diego 03–031	Colorado River, Parker, AZ	Safety Zone	11/28/2003
San Diego 03–034	Pacific Ocean, San Diego Bay, San Diego, CA	Safety Zone	11/9/2003
San Francisco Bay 03–025	San Franccisco, CA	Safety Zone	10/10/2003
San Francisco Bay 03–028	SFB, SPB, and Carquinez Strait, CA	Safety Zone	11/5/2003
San Francisco Bay 03–031	San Francisco Bay, CA	Safety Zone	12/30/2003
Savannah 03–157	Savannah River, Savanah, GA	Security Zone	11/17/2003
Savannah 03–174	Savannah River, Savannah, GA	Security Zone	12/16/2003
Savannah 03–175	Savannah River, Savannah, GA	Security Zone	12/18/2003
Wilmington 03–151	Bogue Sound, NC	Safety Zone	10/7/2003

DISTRICT QUARTERLY REPORT—4TH QUARTER 2003

District docket	Location	Type	Effective date
01–03–109	Bar Harbor, ME, M/V Acadia Clipper Salvage	Safety Zone	10/24/2003
01–03–112	Huntington, NY	Safety Zone	12/31/2003
05–03–132	SPA Creek, Annapolis, MD	Special Local Reg.	11/8/2003
05–03–154	Chesapeake Bay, Hampton Roads, VA	Security Zone	10/1/2003
05–03–155	Elizabeth River, Norfolk, VA	Drawbridge	10/2/2003
05–03–157	York River, West Point, VA	Safety Zone	10/4/2003
05–03–158	Chesapeake Bay, Hampton Roads, Elizabeth	Security Zone	10/5/2003
05–03–159	Chesapeake Bay, Hampton Roads, VA	Security Zone	10/7/2003
05–03–161	COTP Wilmington Zone	Safety Zone	10/7/2003
05–03–162	Chesapeake Bay, Hampton Roads, Elizabeth	Security Zone	10/11/2003
05–03–163	Chesapeake Bay, Hampton Roads, Elizabeth	Security Zone	10/15/2003
05–03–164	Hampton Roads, Virginia	Security Zone	10/17/2003
05–03–165	Chesapeake Bay, Hampton Roads, VA	Security Zone	11/13/2003
05–03–166	Bogue Sound, NC	Safety Zone	10/20/2003
05–03–169	Chesapeake Bay, Hampton Roads, VA	Security Zone	10/14/2003
05–03–170	COTP Wilmington Zone	Safety Zone	10/14/2003
05–03–171	Hampton Roads, Elizabeth River, VA	Security Zone	10/19/2003
05–03–172	Hampton Roads, Elizabeth River, VA	Security Zone	10/23/2003
05–03–173	Hampton Roads, Elizabeth River, VA	Security Zone	11/3/2003
05–03–174	Hampton Roads, Virginia	Security Zone	10/20/2003
05–03–176	Hampton Roads, Virginia	Security Zone	10/28/2003
05–03–178	Hampton Roads, Virginia	Security Zone	11/1/2003
05–03–179	Patapsco River, Northwest Harbor, Baltimore	Safety Zone	11/7/2003
05–03–182	Hampton Roads, Virginia	Security Zone	11/7/2003
05–03–183	Hampton Roads, Virginia	Security Zone	11/12/2003
05–03–187	Hampton Roads, Virginia	Security Zone	11/17/2003
05–03–189	Hampton Roads, Virginia	Security Zone	11/22/2003
05–03–191	Hampton Roads, Virginia	Security Zone	11/27/2003
05–03–192	Hampton Roads, Virginia	Security Zone	11/30/2003
05–03–193	Hampton Roads, Virginia	Security Zone	12/2/2003
05–03–194	Delaware Bay and River	Safety Zone	11/26/2003
05–03–197	Hampton Roads, Virginia	Security Zone	12/5/2003
05–03–198	Baltimore, Maryland	Security Zone	12/5/2003
05–03–201	Virginia Beach, Virginia	Safety Zone	12/4/2003

DISTRICT QUARTERLY REPORT—4TH QUARTER 2003—Continued

District docket	Location	Type	Effective date
05–03–202	Hampton Roads, Virginia	Security Zone	12/11/2003
05–03–203	Hampton Roads, Virginia	Security Zone	12/16/2003
05–03–208	Delaware Bay and River	Safety Zone	12/16/2003
05–03–209	Hampton Roads, Virginia	Security Zone	12/19/2003
05–03–210	Hampton Roads, Virginia	Security Zone	12/26/2003
05–03–212	Hampton Roads, Virginia	Security Zone	12/26/2003
09–03–250	Chicago, IL	Safety Zone	10/4/2003
09–03–279	COTP Detroit Zone, Renaissance Center	Security Zone	10/2/2003
09–03–281	Chicago, IL	Safety Zone	11/22/2003
09–03–282	Saint Lawrence Seaway, New York	Safety and Security	11/2/2003
09–03–286	Chicago, IL	Safety Zone	12/7/2003
11–03–007	Stockton, CA	Drawbridge	12/1/2003
13–03–037	Puget Sound, Washington	Security Zone	10/8/2003
13–03–038	Columbia River	Safety Zone	11/8/2003
13–03–039	Puget Sound, Washington	Security Zone	12/9/2003

[FR Doc. 04–1861 Filed 1–28–04; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–141]

RIN 1625–AA09

Drawbridge Operation Regulations; Caloosahatchee River Bridge (SR 29), Okeechobee Waterway, Labelle, Florida.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Caloosahatchee River bridge (SR 29), Okeechobee Waterway, mile 103, Labelle, Florida. This rule requires the bridge to open on signal, except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need not open. This action is intended to improve movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: This rule is effective March 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–141] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 19, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Caloosahatchee River bridge (SR 29), Okeechobee Waterway, Labelle, Florida, in the **Federal Register** (68 FR 13242). We received one (1) comment on this notice of proposed rulemaking (NPRM). No public hearing was requested, and none was held.

Background and Purpose

The Mayor of Labelle requested a change in regulations governing the operation of the Caloosahatchee River bridge (SR 29), to ease vehicle traffic congestion, during morning and evening rush hours. The roadway is a two-lane, narrow, undivided arterial roadway. The waterway has safe waiting areas on each side of the bridge for all vessels; however, the waterway is used predominantly by small to mid-sized recreational vessels. The roadway is severely congested due to insufficient vehicular capacity. The existing regulation for this bridge is published in 33 CFR 117.5 and requires the bridge to open on signal. The rule will continue to require the bridge to open on signal, except that from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Tugs with tows, public vessels of the United States and vessels in distress shall be passed at any time.

Discussion of Comments and Changes

We received one (1) comment on the notice of proposed rulemaking (NPRM) against the rule change, citing that the period of closure was too long for vessels to wait.

We have carefully considered the comment and decided not to change the proposed rule. Vessels transiting the area would have a 20-hour period during which the bridge would open on signal and adequate safe waiting areas are available.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will only affect a small percentage of vessel traffic through this bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard offered small businesses, organizations, or governmental jurisdictions that believed the rule would affect them, or that had questions concerning its provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. § 117.317(k) is added to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(k) *Caloosahatchee River Bridge (SR 29), Mile 103, Labelle, Florida.*

The Caloosahatchee River bridge (SR 29), mile 103, shall open on signal, except that from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need not open. Exempt vessels shall be passed at any time.

Dated: January 15, 2004.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 04–1857 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 126

[USCG–1998–4302]

RIN 1625–AA07 (Formerly RIN 2115–AE22)

Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities

AGENCY: Coast Guard, DHS.

ACTION: Final rule; announcement of effective date.

SUMMARY: In the final rule with this same title published September 26, 2003, we noted that the Office of Management and Budget (OMB) had not approved a collection of information associated with our requirement that owners or operators of waterfront facilities desiring to handle packaged and bulk-solid dangerous cargo must post warning signs constructed and installed according to National Fire

Protection Association (NFPA) 307, chapter 7–8.7. OMB has since approved that collection of information and the portion of the rule with this requirement will become effective March 1, 2004.

DATES: 33 CFR 126.15(a)(3), as published September 26, 2003 (68 FR 55436), is effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Brian Robinson, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–3), room 1218, telephone 202–267–0018, e-mail *brobinson@comdt.uscg.mil.* If you have questions on viewing the docket (USCG–1998–4302), call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: Section 126.15(a)(3) of title 33 Code of Federal Regulations (CFR) requires owners or operators of all designated waterfront facilities to post warning signs. Posting of warning signs is a collection of information under OMB control no. 1625–0016 (Formerly 2115–0054). The final rule that contained the provisions on warning signs was published in the **Federal Register** on September 26, 2003 (68 FR 55436), and is available electronically through the docket (USCG–1998–4302) web site at *http://dms.dot.gov.* It became effective on October 27, 2003, with the exception of 33 CFR 126.15(a)(3).

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review on October 6, 2003. On November 17, 2003, after reviewing the rule, OMB approved the collection of information required by this final rule under OMB control no. 1625–0016.

Dated: January 22, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–1860 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–277]

RIN 2115–AA97

Security Zone; Captain of the Port Milwaukee Zone, Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the size of the security zone for Kewanuee Nuclear Power Plant on Lake Michigan. This security zone is necessary to protect the nuclear power plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. The zone is intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective March 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at Marine Safety Office Milwaukee, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Michael Schmidtke, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 17, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Captain of the Port Milwaukee Zone, Lake Michigan'' in the **Federal Register** (68 FR 59752). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This regulation revises a previously established security zone around the Kewaunee Nuclear Power Plant. This security zone is necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Milwaukee, or his authorized representative, are prohibited from entering or moving within the zone. The Captain of the Port Milwaukee may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, its exact location, and the restrictions involved via Local Notice to Mariners and the Broadcast Notice to Mariners.

Discussion of Comments and Changes

We received no comments in response to this rulemaking. Therefore, we have made no changes from proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

Small Entities

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

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

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Our rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that it may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Milwaukee to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.916, revise paragraph (a)(1) to read as follows:

§ 165.916 Security Zone; Captain of the Port Milwaukee Zone, Lake Michigan.

(a) *Location.* * * *

(1) *Kewaunee Nuclear Power Plant.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44°20.715′ N, 087°32.080′ W; then easterly to 44°20.720′ N, 087°31.630′ W; then southerly to 44°20.480′ N, 087°31.630′ W; then westerly to 44°20.480′ N, 087°31.970′ W, then northerly following the shoreline back to the point of origin (NAD 83).

* * * * *

Dated: January 13, 2004.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 04–1859 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–012]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

Security Zone; General Dynamics, Electric Boat Corporation, Groton, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the existing security zone at the General Dynamics Electric Boat Corporation (EB) facility in Groton, CT. The rule increases the parameters of the existing security zone around the southern portion of the EB facility to fully encompass the facility and infrastructure. This rule also changes the coordinates used in the existing security zone to North American Datum 1983. The enlargement of the zone is necessary to provide continuous coverage for EB, safeguarding the facility, U.S. Naval Vessels, and other vessels located at the facility, material storage areas, and adjacent residential and industrial areas from sabotage or other subversive acts, accidents, or incidents of a similar nature. This security zone prohibits all persons and vessels from entering or operating within the prescribed security zone without first obtaining authorization from the Captain of the Port, Long Island Sound.

DATES: This rule is effective March 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–012, and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways

Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 6, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety and Security Zones; New London Harbor, Connecticut—Security Zone'' in the **Federal Register** (68 FR 23935). We received two letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

As a highly visible and vital part of the U.S. Navy submarine construction and maintenance, as well as being adjacent to other facilities and population centers, the General Dynamics Electric Boat Corporation (EB) facility in Groton, CT presents a potential target for terrorist attack. To protect this facility from such attack, a permanent security zone, located at 33 Code of Federal Regulations (CFR) 165.140(a)(1), has been in place around the Electric Boat facility for several years. This rule will correct inaccuracies in the directional orientation of the current coordinates in 33 CFR 165.140(a)(1) and revises these coordinates to North American Datum 1983, providing coordinates consistent with those used by the maritime community. This rule will also expand the security zone parameters to encompass the southern end of the EB facility. The zone is established by reference to coordinates.

Discussion of Comments and Changes

Two comments were received regarding the proposed rule, both from commercial fishermen who operate in the Thames River in the vicinity of the EB facility. The first letter claims that the security zone will have an adverse economic impact on fishermen who have historically worked in the area around the EB facility. As provided for in the general regulations regarding security zones contained in 33 CFR 165.33, any vessel may request entry into the security zone from the Captain of the Port, Long Island Sound (COTP). The COTP will review requests to enter the security zone on a case-by-case basis. Fishermen may request permission to enter the zone for a one-time or ongoing basis. Permission to enter the zone is subject to review and/or revocation by the COTP based upon security concerns. No changes to the regulatory text were made in response to this comment.

The second comment letter also raised concern with the potential interference the security zone would have on the operation of commercial fishermen in the area of the security zone. Specifically, the comment recommended establishing similar conditions at EB to the restrictions on transit surrounding Naval Submarine Base New London, Groton, Connecticut, and recommends a similar process of registration to use the security zone area. The waters of the Thames River adjacent to Naval Submarine Base New London contain both a security zone immediately adjacent to the Base, as well as a restricted area established by the U.S. Army Corps of Engineers (ACOE) under 33 CFR 334.75; the restricted area extends the entire width of the Thames River. The purpose of a restricted area, as defined in 33 CFR 334.2(b), is to prohibit or limit public access to the area in order to provide security for Government property and or protection to the public from the risks of damage or injury arising from the Government's use of that area. Per the regulation authorizing the establishment of restricted areas by the ACOE at 33 CFR 334.3, however, a restricted area shall provide for public access to the maximum extent possible. A security zone established under the Ports and Waterways Safety Act, 33 United States Code (U.S.C.) 1221, *et seq,* and the Magnuson Act, 50 U.S.C. 191, *et seq,* and the regulations established thereunder, more appropriately addresses the security concerns surrounding the EB facility, by completely prohibiting access to the security zone area. As discussed above, however, fishermen may request permission either on an individual trip basis or an ongoing basis from the COTP to fish in those areas restricted by the security zone. No changes to the regulatory text were made in response to this comment.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: The security zone encompasses only a small portion of the Thames River, encompassing pier and industrial areas not suitable for commercial or recreational vessel transit; there is no impact on the navigable channel in the Thames River by the increased security zone area at the southern portion of the Electric Boat property; the security zone minimally impacts the channel, but this overlap is necessary to provide sufficient security for naval vessels and Electric Boat infrastructure, and leaves ample room for vessels to navigate around the security zone in the channel; and any commercial impact may be alleviated by requesting permission to enter the security zone from the COTP. While recognizing the potential for some minimal impact from the rule, the Coast Guard considers it de minimus in comparison to the compelling national interest in protecting the naval vessels under construction and undergoing maintenance at the EB Facility, as well as protecting adjacent industrial facilities and residential areas from possible acts of terrorism, sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Long Island Sound and the Thames River covered by the RNA and/or safety and security zones.

For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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

qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.140, by revising paragraph (a)(1) and adding paragraph (a)(3) to read as follows:

§ 165.140 New London Harbor, Connecticut—Security Zone

(a) *Security zones:* (1) *Security Zone A.* The waters of the Thames River west of the Electric Boat Corporation Shipyard enclosed by a line beginning at a point on the shoreline at 41°20′16″ N, 72°04′47″ W; then running west to 41°20′16″ N, 72°04′57″ W; then running north to 41°20′26″ N, 72°04′57″ W; then northwest to 41°20′28.7″ N, 72°05′01.7″ W; then north-northwest to 41°20′53.3″ N, 72°05′04.8″ W; then north-northeast to 41°21′02.9″ N, 72°05′04.9″ W; then east to a point on shore at 41°21′02.9″ N, 72°04′58.2″ W.

* * * * *

(3) All coordinates are North American Datum 1983.

* * * * *

Dated: January 15, 2004.

Joseph J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–1856 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–018]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Puget Sound, WA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard Captain of the Port Puget Sound published in the **Federal Register** of January 14, 2004, a final rule concerning security and safety zones for the protection of large passenger vessels. Wording in § 165.1317(k) is being corrected to better explain the exception paragraph for the regulation. This document makes the clarification.

DATES: This rule is effective February 8, 2004.

FOR FURTHER INFORMATION CONTACT: LTJG T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on January 14, 2004 (69 FR 2066), adding 33 CFR 165.1317. In this document, paragraph (k) of the regulatory text was not as clear as it could have been. This correction amends the regulatory text published on January 14, 2004.

In rule FR Doc. 04–747 published on January 14, 2004 (69 FR 2066), make the following correction.

§165.1317 [Amended]

On page 2069 in paragraph (k) remove the phrase ''the regulations govern'' and add in its place the phrase ''the measures or directions govern''.

Dated: January 26, 2004.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 04–1924 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–50–200405 (a); FRL–7614–7]

Approval and Promulgation of Implementation Plans; Revisions to South Carolina State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of South Carolina on November 19, 2003, for the purpose of establishing specific consultation procedures for the implementation of transportation conformity requirements. This SIP revision also incorporates the State's adoption of the Federal transportation conformity regulations verbatim. EPA is not taking action on portions of the transportation conformity regulations affected by *Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (DC Cir. 1999), including sections 102(c)(1), 118(e)(1), 120(a)(2), 121(a)(1), and 124(b). The transportation conformity rule assures that projected emissions from transportation plans, improvement programs and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirement at the state level. This action streamlines the conformity process to allow direct consultation among agencies at the local level. This final approval action is limited to requirements for transportation conformity.

DATES: This direct final rule is effective March 29, 2004 without further notice, unless EPA receives adverse comment by March 1, 2004. If adverse comment is received, EPA 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: Comments may be submitted by mail to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections IV.B.1. through 3.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9044. Mr. Laurita can also be reached via electronic mail at *laurita.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is a SIP?

The states, under section 110 of the Clean Air Act as amended in 1990 (Act), must develop air pollution regulations and control strategies to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95–95). Although

the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states ''that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.'' The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53).

D. Why Must the State Submit a Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The rule was subsequently revised on August 7, 1995 (60 FR 40098), and November 14, 1995 (60 FR 57179). The State of South Carolina submitted a transportation conformity SIP to EPA Region 4 on November 8, 1996. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998.

States may choose to develop in place of regulations, a Memorandum of Agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to applicable NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local Air Quality Agencies , EPA and U.S. Department of Transportation (USDOT) are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved MVEB in order for USDOT to make a positive conformity determination with respect to the SIP.

II. Analysis of State's Submittal

A. What Did the State Submit?

The State of South Carolina chose to address the transportation conformity SIP requirements using State rules that incorporate by reference portions of the Federal conformity rule and a Memorandum of Agreement (MOA) that provides the procedures for interagency consultation. The transportation conformity rule, 40 CFR 93.105, requires the state to develop specific procedures for consultation, resolution of conflict and public consultation. On November 19, 2003, the State of South Carolina, through the Department of Health and Environmental Control (DHEC), submitted the rules for transportation conformity to satisfy the conformity SIP requirement of the August 15, 1997 (62 FR 43780) conformity rule revision. This submittal also includes the revisions to the conformity regulations made on April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808). DHEC gave notice of rule-making proceedings to the public on August 22, 2003 and held a public hearing on September 22, 2003. These amendments to the South Carolina Code of Regulations Chapter 61 became effective October 24, 2003.

B. What Is EPA Approving Today and Why?

EPA is approving the South Carolina transportation conformity rule submitted to the EPA Region 4 office on November 19, 2003, by the Deputy Commissioner of the South Carolina Department of Health and Environmental Control, with the exception of portions of the transportation conformity regulations affected by *Environmental Defense Fund* v. *EPA,* 167 F.3d 641 (D.C. Cir. 1999), including sections 102(c)(1), 118(e)(1), 120(a)(2), 121(a)(1), and 124(b).

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the South Carolina SIP.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation

among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, FHWA, FTA, local transit operators, the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, FHWA and FTA.

The State of South Carolina developed a statewide consultation rule based on a Memorandum of Agreement (MOA) signed by the Columbia Area Transportation Study MPO, the Greenville Area Transportation Study MPO, the Spartanburg Area Transportation Study MPO, the Augusta Regional Transportation Study MPO, the Rock Hill/Fort Mill Area Transportation Study MPO, Florence Area Transportation Study MPO, the Anderson Area Transportation Study MPO, the Charleston Area Transportation Study MPO, the Grand Strand Area Transportation Study MPO, the Sumter Area Transportation Study MPO, the South Carolina DHEC, the South Carolina DOT, the FHWA South Carolina Division Office, FTA Region 4, and EPA Region 4. The requirement for interagency consultation is currently only applicable to the Cherokee County 1-hour ozone maintenance area, as it is the only area in South Carolina that had previously been designated nonattainment for any NAAQS. The interagency consultation requirement will become effective for any other areas designated as nonattainment under the 8-hour ozone or PM2.5 NAAQS. The consultation process developed by the South Carolina Department of Health and Environmental Control is unique to the State of South Carolina and is enforceable, effective October 24, 2003.

III. Final Action

EPA is approving the aforementioned changes to the South Carolina SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 29, 2004 without further notice unless the Agency receives adverse comments by March 1, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 29, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Supplementary Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under SC–50. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking SC–50.'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *laurita.matthew@epa.gov.* Please include the text ''Public comment on proposed rulemaking SC–50.'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulation.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking SC–50.'' in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

C. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 5, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120(e) is amended by adding a new entry at the end of the table for ''Transportation Conformity'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
* * * *	*	*	*
Transportation Conformity	10/24/03	January 29, 2004 [insert citation of publication]	

[FR Doc. 04–1818 Filed 1–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7612–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the Hubbell/Tamarack City parcel of Operable Unit I (OUI) of the Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of partial deletion of the Hubbell/Tamarack City parcel of OUI of the Torch Lake Superfund Site (Site), located in, Houghton County Michigan, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, in appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

DATES: This direct final notice of partial deletion will be effective March 29, 2004 unless EPA receives adverse comments by March 1, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Dave Novak, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region V Record Center, 77 W. Jackson, Chicago, Il 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Lake Linden/Hubbell Public Library, 601 Calumet St., Lake Linden, MI 49945, (906) 296–0698 Monday through Friday 8 a.m. to 4 p.m., Tuesday and Thursday 6 p.m to 8 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931 (906) 482–4570, Monday, Tuesday and Thursday 10 a.m. to 9 p.m., Wednesday and Friday 10 a.m. to 5 p.m., and Saturday 12 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Brenda Jones, Remedial Project Manager at (312) 886–7188, *Jones.Brenda@epa.gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@epa.gov* or 1–800–621–8431, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final notice of deletion of the Hubbell/Tamarack City parcel of OUI of the Torch Lake, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 29, 2004 unless EPA receives adverse comments by March 1, 2004 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final partial deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Hubbell/Tamarack City portion of the Torch Lake Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of this Site:

(1) The EPA consulted with Michigan on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Michigan concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of intent to delete is published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with a decision on the deletion based on the notice of intent to delete and the comments already received

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL.

Site Location

The Torch Lake Superfund Site (the Site) is located on the Keweenaw Penninsula in Houghton County, Michigan. The Site includes Torch Lake, the west shore of Torch Lake, the northern portion of Portage Lake, the Portage Lake Canal, Keweenaw Waterway, the North Entry to Lake Superior, Boston Pond, Calumet Lake, and other areas associated with the Keweenaw Basin. Tailing piles and slag piles deposited along the western shore of Torch Lake, Northern Portage Lake, Keweenaw Waterway, Lake Superior, Boston Pond, and Calumet Lake are also included as part of the Site. Tailing piles are located at Lake Linden, Hubbell/Tamarack City, Mason, Calumet Lake, Boston Pond, Michigan Smelter, Isle-Royale, Dollar Bay, and Gross Point. Slag piles are located at Quincy Smelter and Hubbell City.

Site History

Torch Lake was the site of copper milling and smelting facilities and operations for over 100 years. The lake was a repository of milling wastes, and served as the waterway to transportation to support the mining industry. The first mill opened on Torch Lake in 1868. At the mills, copper was extracted by crushing or ''stamping'' the rock into smaller pieces and driving them through successively smaller meshes. The copper and crushed rock were separated by gravimetric sorting in a liquid medium. The copper was sent to a smelter. The crushed rock particles, called ''tailings'', were discarded along with mill processing water, typically by pumping into the lakes.

Mining output, milling activity, and tailing production peaked in the Keweenaw Peninsula in the early 1900s to 1920. All of the mills at Torch Lake were located on the west shore of the lake and many other mining mills and smelters were located throughout the Keweenaw Peninsula. In about 1916, advances in technology allowed recovery of copper from tailings previously deposited in Torch Lake. Dredges were used to collect submerged tailings which were then screened, recrushed, and gravity separated. An

ammonia leaching process involving cupric ammonium carbonate was used to recover copper and other metals from conglomerate tailings. During the 1920s, chemical reagents were used to further increase the efficiency of reclamation. The chemical reagents included lime, pyridine oil, coal tar creosotes, wood creosote, pine oil, and xanthates. After reclamation activities were complete, chemically treated tailings were returned to the lakes. In the 1930s and 1940s, the Torch Lake mills operated mainly to recover tailings in Torch Lake. In the 1950s, copper mills were still active, but by the late 1960s, copper milling had ceased.

Over 5 million tons of native copper was produced from the Keweenaw Peninsula and more than half of this was processed along the shores of Torch Lake. Between 1868 and 1968, approximately 200 million tons of tailings were dumped into Torch Lake filling at least 20 percent of the lake's original volume.

In June 1972, a discharge of 27,000 gallons of cupric ammonium carbonate leaching liquor occurred into the north end of Torch Lake from the storage vats at the Lake Linden Leaching Plant. The Michigan Water Resources Commission (MWRC) investigated the spill. The 1973 MWRC report discerned no deleterious effects associated with the spill, but did observe that discoloration of several acres of lake bottom indicated previous discharges.

In the 1970s, environmental concern developed regarding the century-long deposition of tailings into Torch Lake. High concentrations of copper and other heavy metals in Torch Lake sediments, toxic discharges into the lakes, and fish abormalities prompted many investigations into long- and short-term impacts attributed to mine waste disposal. The International Joint Commission's Water Quality Board designated the Torch Lake basin as a Great Lakes Area of Concern (AOC) in 1983. Also in 1983, the Michigan Department of Public Health announced an advisory against the consumption of Torch Lake sauger and walleye fish due to tumors of unknown origin. The Torch Lake Site was proposed for inclusion on the National Priorities List (NPL) in October of 1984. The Site was placed on the NPL in June 1986. The Torch Lake Site is also on the list of sites identified under Michigan's Natural Resources and Environmental Protection Act 451 part 201.

A Draft Remedial Action Plan (RAP) for the Torch Lake AOC was developed by Michigan Department of Natural Resources (MDNR) in October 1987 to address the contamination problems and to recommend the remedial action for Torch Lake. Revegetation of lakeshore tailings to minimize air-borne particulate matter was one of the recommended remedial actions in the RAP.

Attempts to establish vegetation on the tailing piles in Hubbell/Tamarack City have been conducted since the 1960s to stabilize the shoreline and to reduce air particulate from tailings. It has been estimated that 40 to 50 percent of tailings in this area are vegetated.

Remedial Investigation and Feasibility Study (RI/FS)

On May 9, 1988, Special Notice Letters were issued to Universal Oil Products (UOP) and Quincy Mining Co. to perform a Remedial Investigation/Feasibility Study (RI/FS). UOP is the successor corporation of Calumet Hecla Mining Company which operated its milling and smelting on the shore of Lake Linden and disposed of the generated tailings in the area. On June 13, 1988, a Notice Letter was issued to Quincy Development Company, which was the current owner of a tailing pile located on the lake shore of Mason City. Negotiations for the RI/FS Consent Order with these Potentially Responsible Parties (PRPs) were not successful due to issues such as the extent of the Site, and the number of PRPs. Subsequently, U.S. EPA contracted with Donohue & Associates in November 1988 to perform the RI/FS at the Site.

On June 21, 1989, U.S. EPA collected a total of eight samples from drums located in the Old Calumet and Hecla Smelting Mill Site near Lake Linden, the Ahmeek Mill Site near Hubbell City, and the Quincy Site near Mason. On August 1, 1990, nine more samples were collected from drums located above the Tamarack Site near Tamarack City. Based on the results of these samples, U.S. EPA determined that some of these drums may have contained hazardous substances. During the week of May 8, 1989, the U.S. EPA also conducted ground penetrating radar and a subbottom profile (seismic) survey of the bottom of Torch Lake. The area in which this survey was conducted is immediately off-shore from the Old Calumet and Hecla Smelting Mill Site. The survey located several point targets (possibly drums) on the bottom of Torch Lake. Based on the drum sampling results and seismic survey, U.S. EPA executed an Administrative Order by Consent, dated July 30, 1991, which required six companies and individuals to sample and remove drums located on the shore and lake bottom. Pursuant to the Administrative Order, these entities removed 20 drums with unknown contents off-shore from the Peninsula Copper Inc., and the Old Calumet and Hecla Smelting Mill Site in September 1991. A total of 808 empty drums were found in the lake bottom. These empty drums were not removed from the lake bottom. A total of 82 drums and minor quantities of underlying soils were removed from the shore of Torch Lake. The removed drums and soils were sampled, over packed, and disposed off-site at a hazardous waste landfill.

Due to the size and complex nature of the Site, three OUs have been defined for the Site. OU I includes surface tailings, drums, and slag piles on the western shore of Torch Lake. Approximately 500 acres of tailings are exposed surficially in OU I. The Hubbell/Tamarack parcel is included in OU I, in addition to the Lake Linden and Mason parcels.

OU II includes groundwater, surface water, submerged tailings and sediment in Torch Lake, Portage Lake, the Portage channel, and other water bodies at the site.

OU III includes tailing slag deposits located in the north entry of Lake Superior, Michigan Smelter, Quincy Smelter, Calumet Lake, Isle-Royale, Boston Pond, and Grosse-Point (Point Mills).

Remedial Investigations (RIs) have been completed for all three operable units. The RI and Baseline Risk Assessment (BRA) reports for OU I was finalized in July 1991. The RI and BRA reports for OU III were finalized on February 7, 1992. The RI and BRA reports for OU II were finalized in April 1992. The Ecological Assessment for the entire Site was finalized in May 1992.

Record of Decision Findings

A Record of Decision (ROD) was completed to select remedial actions for OU I and III on September 30, 1992. A ROD was completed to select remedial actions for OU II on March 31, 1994.

The remedies primarily address ecological impacts. The most significant ecological impact is the severe degradation of the benthic communities in Torch Lake as a result of metal loadings from the mine tailings. The remedial action required that the contaminated stamp sands (tailings) and slag piles contributing to site-specific ecological risks at the Torch Lake Superfund Site (OU I & OU III) be covered with a soil and vegetative cover as identified in the RODs for this Site and as documented in the Final Design Document dated September 10, 1998. The ROD requires deed restrictions to control the use of the tailing piles so that tailings will not be left in a

condition which is contrary to the intent of the ROD. No further response action was selected for OU II. OU II will be allowed to undergo natural recovery and detoxification.

In addition, the RODs for OU I and OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Torch Lake was chosen as a worst-case scenario to study the recovery process. It was assumed that other affected water bodies would respond as well, or better, than Torch Lake to the implemented remedy.

Characterization of Risk

No additional response action(s) is required at the Hubbell/Tamarack City parcel of the Torch Lake Superfund Site. The Hubbell/Tamarack City parcel has been designated as operational and functional. The current conditions at the Hubbell/Tamarack City parcel are protective of human health and the environment.

Response Action

A final design for OU I and OU II was completed in September 1998. Also in September 1998, U.S. EPA obligated $15.2 million for the implementation of the selected remedies for OU I and OU III. As of January 1, 2001, the remedial actions at the Hubbell/Tamarack City portion of OU I have been completed.

The Interagency Agreement (IAG) was signed with USDA-NRCS to perform remedial action (RA) management and oversight. EPA believes that USDA-NRCS was the best choice for construction management and oversight because of its extensive history with soil erosion and stabilization projects, and its experience with the Site.

Actual on-Site construction began in June 1999. Currently, about 85 percent of the Site remedy is complete, including all of OU1 (parcels at Lake Linden, Hubbell/Tamarack and Mason). Hubbell/Tamarack (140 acres covered) was completed by October 2000. However, a washout occurred in 2001 and again in 2002 near the lake outlet of a surface water diversion path. Both washouts were promptly repaired and are expected to remain stable. Copies of the required deed restrictions for the Hubbell/Tamarack parcel were obtained by EPA in 2003 to verify the completion of this component of the remedy and filed in the EPA's Torch Lake Site Administrative Record.

Remediated areas include cover material consisting of six to ten inches of sandy-loam soil and a vegetative mat. The vegetative mat was achieved through a seed mix applied directly on top of the sandy-loam soil. The seed mix was typically applied at approximately 90 pounds per acre. The typical seed mix contained six species of plants, including perennia ryegrass (*Lolium perene*), tall fescue (*Festuca arundiancea*), creeping red fescue (*Festica rubra*), red clover (*Trifolium pratense*), alfalfa (*vernal Medicago falcata*), and birds foot trefoil (*Lotus comiculatus*). This mix of plant species was selected because of their rapid growth rate and because they are relatively resilient. Rapid stabilization of the soil cover material with vegetation is important at the Site in order to avoid soil washouts and to accommodate the short growing season. Variations of this seed mix were applied to a small number of areas to accommodate landowner preference. Overall, the vegetative growth in most areas is well established and is stabilizing the soil portion of the cover material.

Shoreline protection was also installed along much of the shoreline where the remedy was implemented. Shoreline protection includes rip-rap rock (rock boulders averaging about one-foot in diameter in the shape midway between a sphere and a cube with a specified density and integrity) which protects the remedy from wave erosion.

EPA and MDEQ have determined that RA construction activities have so far been performed according to specifications and anticipate that cover material and shoreline protection installed at the Site will meet remedial action objectives for the Site.

Cleanup Standards

The objectives of the remedies were to ensure that all soil parcels were soil covered with vegetation. All Hubbell/Tamarack City parcels were operational and functional for a period up to three years after the construction of the parcel or until the remedy is jointly determined by the U.S. EPA and the MDEQ to be functioning properly and performing as designed.

Operation and Maintenance

In 1999 and 2000, as part of the remedy requirement for long-term monitoring, EPA conducted environmental sampling as a way to establish the environmental baseline conditions of Torch Lake. It is anticipated that future long-term monitoring events will be conducted by the MDEQ and the results compared to the 2001 baseline study to identify changes and/or establish trends in lake conditions.

The RODs for OU I & OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Other O & M activities include site inspections, repairs and fertilization of the vegetative cover, if necessary. Based on site inspections conducted during Summer 2002 and 2003, repairs and fertilization of the soil and vegetative cover at the Hubbel/Tamarack City parcel are no longer necessary.

Five-Year Review

Because hazardous substances will remain at the Site above levels that allow for unrestricted use and unlimited exposure, the EPA will conduct periodic reviews at this Site. The review will be conducted pursuant to CERCLA 121 (c) and as provided in the current guidance on Five Year Reviews; OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Guidance, June 2001. The first five-year review for the Torch Lake Site was completed on March 4, 2003. This first five-year review stated that EPA intended to pursue partial NPL deletion of Hubbell/Tamarack in 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion on this Site from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Michigan, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is deleting the Hubbell/Tamarack City parcel of Torch Lake Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective March 29, 2004 unless EPA receives adverse comments by March 1, 2004. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. Concurrent with this action EPA will prepare a response to comments and as appropriate continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 14, 2004.

William E. Muno,

Acting Regional Administrator, Region V.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Michigan ''MI'' by revising the entry for ''Torch Lake'' and the city ''Houghton.''

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Sitename	City/County	(Notes)[a]
* * *	* * *	* * *	
MI	Torch Lake	Houghton	P
* * *	* * *	* * *	

(A)* * *

P=Sites with partial deletion(s).

* * * * *

[FR Doc. 04–1543 Filed 1–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7614–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the River Road Landfill Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the deletion of the River Road Landfill Site (Site) in Hermitage, Pennsylvania, from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, (CERCLA). EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that the remedial action for the Site has been successfully implemented under CERCLA. For this Site, the selected remedy is protective of human health and the environment as long as deed restrictions and continued operation and maintenance of the Existing Treatment Scheme described in EPA's 1995 Record of Decision currently being implemented in accordance with the attached PADEP Post-Closure Plan (or modification as required and/or approved by PADEP or EPA), are continued.

EFFECTIVE DATE: January 29, 2004.

ADDRESSES: Comprehensive information on this Site is available through the public docket which is available for viewing at the Site information repositories at the following locations: U.S. Environmental Protection Agency, Region III, Administrative Records, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Telephone (215) 814–3157; and Buhl-Henderson Community Library, 11 North Sharpsville Avenue, Sharon, PA 16146.

FOR FURTHER INFORMATION CONTACT: Donna Santiago (3HS22), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. Telephone 215–814–3222.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: River Road Landfill Site.

EPA published a Notice of Intent to Delete (NOID) the River Road Landfill Site from the NPL on September 26, 2003, in the **Federal Register** (65 FR 45013). The closing date for comments on the NOID was October 28, 2003. EPA did not receive any comments on the proposed deletion. Therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that future conditions at the site warrant such action.

Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 12, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site: ''River

Road Landfill/Waste Mngmnt, Inc.'' Site, Hermitage, PA.

[FR Doc. 04–1823 Filed 1–28–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01–146; RM–9966; FCC 03–35]

Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450–470 MHz Band; Corrections

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on April 21, 2003 (68 FR 19444), revising Commission rules. That document inadvertently failed to update the station class for frequency 464.575 MHz listed in § 90.35(b)(3) and incorrectly listed a cross-reference in § 90.267(e)(3). This document corrects the final regulations by revising these sections.

DATES: Effective on January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Acting Associate Division Chief, Public Safety and Critical Infrastructure Division at (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Erratum, FCC 03–35, released on December 23, 2003.

This is the second set of corrections. The first set of corrections was published in the **Federal Register** on September 25, 2003 (68 FR 55319). This document augments the corrections which were published in the **Federal Register** on September 25, 2003 (68 FR 55319).

In the FR Doc published in the **Federal Register** on April 21, 2003 (68 FR 19444), make the following corrections.

List of Subjects in 47 CFR Part 90

FCC equipment, Radio, Reporting and recordkeeping requirements.

■ Accordingly, 47 CFR part 90 is corrected by making the following correcting amendments:

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. In § 90.35, amend paragraph (b)(3) by adding a frequency to the table to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* *	* *	* *	* *
464.575	Base or mobile	62	
* *	* *	* *	* *

■ 3. Revise paragraph (e)(3) of § 90.267 to read as follows:

§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low power use.

* * * * *

(e) * * *

(3) The frequencies in Group C that are subject to the provisions of § 90.35(c)(67) will not be available for itinerant use until the end of the freeze on the filing of high power applications for 12.5 kHz offset channels in the 460–470 MHz band.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1936 Filed 1–28–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 19
Thursday, January 29, 2004

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

DEPARTMENT OF ENERGY

10 CFR Part 300

RIN 1901–AB11

General Guidelines for Voluntary Greenhouse Gas Reporting

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 5, 2003, the Department of Energy published a Notice of Proposed Rulemaking (68 FR 68204) to revise the General Guidelines governing the Voluntary Reporting of Greenhouse Gases Program established by Section 1605(b) of the Energy Policy Act of 1992. The notice announced that the closing date for receiving public comments would be February 3, 2004. Several organizations requested that the comment period be extended to allow additional time for understanding and preparing written comments on the proposed revisions to the General Guidelines. The Department has agreed to extend the comment period to February 17, 2004. In addition, the Department intends, subsequently, to publish for comment a supplemental notice of proposed revised General Guidelines, simultaneously with the publication for public comment of planned Technical Guidelines.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Please submit written comments to: *1605bgeneral guidelines.comments@hq.doe.gov.* Alternatively, written comments may be sent to: Mark Friedrichs, PI–40; Office of Policy and International Affairs; U.S. Department of Energy; Room 1E190, 1000 Independence Ave., SW., Washington, DC 20585. You may review comments received by DOE, the record of the public workshop held on January 12, 2004, and other related material at the following Web site: *http://www.pi.energy. gov/enhancingGHGregistry/proposed guidelines/generalguidelines.html.* If you lack access to the internet, you may access this website by visiting the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *1605bgeneral guidelines.comments@hq.doe.gov* [Please indicate if your e-mail is a request for information, rather than a public comment.]

Issued in Washington, DC, on January 23, 2004.

Robert G. Card,

Under Secretary for Energy, Science and Environment.

[FR Doc. 04–1922 Filed 1–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require replacement of a certain transformer rectifier unit (TRU) with a certain new TRU. This action is necessary to prevent ignition of the input filter capacitors of the TRU in position 2 of the avionics compartment, which could potentially result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–63–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–63–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received reports of smoke and/or smoke smells in the cockpit. Investigation revealed that ignition of the input filter capacitors of the transformer rectifier unit (TRU) in position 2 of the avionics compartment was the origin of the smoke generation. This condition, if not corrected, could potentially result in smoke in the cockpit.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–24–1099, Revision 02, dated February 11, 2003, which describes procedures for replacement of a certain TRU with a certain new TRU. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–554(B), dated November 13, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 553 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would be supplied by the airplane manufacture at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $35,945, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2003–NM–63–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category; except those airplanes on which Airbus Modification 30737 has been accomplished in production (reference Airbus Service Bulletin A320–24–1099, Revision 02, dated February 11, 2003, in service):

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition of the input filter capacitors of the transformer rectifier unit (TRU) in position 2 of the avionics compartment, which could potentially result in smoke in the cockpit, accomplish the following:

Replacement

(a) Prior to the accumulation of 15,000 total flight hours, or within 16 months after the effective date of this AD, whichever occurs later, replace the TRU, part number Y005–2, with a new TRU, part number Y005–3, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–24–1099, Revision 02, dated February 11, 2003.

(b) Replacements accomplished before the effective date of this AD per Airbus Service Bulletin A320–24–1099, dated March 5, 2002; or Revision 1, dated July 26, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(c) As of the effective date of this AD no person shall install a TRU, part number Y005–2, within position 2 of the avionics compartment on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–544(B), dated November 13, 2002.

Issued in Renton, Washington, on January 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1908 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Bombardier Model DHC–7–100 series airplanes, that currently requires repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, that amendment also provides a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight. This action would extend the compliance time of the repetitive inspections based on test evidence and is intended to address the identified unsafe condition.

DATES: Comments must be received by March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–153–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–153–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 20, 2000, the FAA issued AD 2000–02–07, amendment 39–11526 (65 FR 4354, January 27, 2000), applicable to all Bombardier Model DHC–7–100 series airplanes, to require repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, that amendment also provides a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. That action was prompted by issuance of mandatory continuing airworthiness

information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA) issued Canadian airworthiness directive AD CF–1999–03R1, dated August 22, 2001. That AD revised Canadian airworthiness directive AD CF–1999–03, dated February 22, 1999, by increasing the repetitive inspection interval of the baggage door stop fittings and the support structure. The repetitive interval was increased based on test evidence.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 2000–02–07 to continue to require repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, this proposal also continues to provide a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. However, the proposed AD would change the compliance interval for the repetitive inspections from 1,000 flight cycles to 10,000 flight cycles.

Explanation of Change Made to Existing Requirements

The FAA has changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this proposed AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this proposed AD, we have retained the language of the existing AD regarding that material.

Cost Impact

The proposed changes in this action add no additional economic burden. The current costs for this proposed AD are repeated for the convenience of affected operators, as follows:

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,240, or $195 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11526 (65 FR 4354, January 27, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2003–NM–153–AD. Revises AD 2000–02–07, Amendment 39–11526.

Applicability: All Model DHC–7–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight, accomplish the following:

Repetitive Inspections

(a) At the latest of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform a high frequency eddy current inspection to detect fatigue cracks of the locking pin fittings of the baggage door and locking pin housings of the fuselage; and a detailed inspection to detect fatigue cracks of the inner door structure on all four locking attachment fittings of the baggage door; in accordance with de Havilland Temporary Revision (TR) 5–101, dated April 24, 2001, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. Thereafter, repeat the inspections at intervals not to exceed 10,000 flight cycles.

(1) Inspect prior to the accumulation of 12,000 total flight cycles.

(2) Inspect within 600 flight cycles or 3 months after March 2, 2000 (the effective date of AD 2000–02–07, amendment 39–11526), whichever occurs later.

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

Corrective Actions

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, as applicable, except as provided in paragraph (c) of this AD. For operators that elect to accomplish the actions specified in paragraph (c) of this AD: After accomplishment of the replacement required by paragraph (b)(1) or (b)(2) of this AD, the Airplane Flight Manual (AFM) revision and placard required by paragraph (c) of this AD may be removed.

(1) If a crack is detected in a baggage door locking pin fitting or fuselage locking pin housing: Replace the fitting or housing with a new fitting or housing, as applicable, in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2.

(2) If a crack is detected in the inner baggage door structure at the locking attachment fittings: Replace the structure with a new support structure in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2, or repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(c) For airplanes on which only one baggage door stop fitting or its support structure is found cracked at one location, and on which the pressurization system ''Dump'' function is operational: Prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD. Within 1,000 flight cycles after accomplishment of the requirements of paragraphs (c)(1) and (c)(2) of this AD, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) Revise the Limitations Section of the FAA-approved DHC–7 AFM, PSM 1–71A–1A, to include the following statement. This AFM revision may be accomplished by inserting a copy of this AD into the AFM.

> ''Flight is restricted to unpressurized flight below 10,000 feet mean sea level (MSL). The airplane must be operated in accordance with DHC–7 AFM, PSM 1–71A–1A, Supplement 20.''

(2) Install a placard on the cabin pressure control panel or in a prominent location that states the following:

> ''DO NOT PRESSURIZE THE AIRCRAFT UNPRESSURIZED FLIGHT PERMITTED ONLY IN ACCORDANCE WITH DHC–7 AFM PSM 1–71A–1A, SUPPLEMENT 20 FLIGHT ALTITUDE LIMITED TO 10,000 FEET MSL OR LESS.''

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–03R1, dated August 22, 2001.

Issued in Renton, Washington, on January 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1907 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–345–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F airplanes; and Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. This proposal would require, among other actions, performing repetitive inspections for cracking of the counterbore of the two lower mounting holes and the lower forward edge of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148, and replacing the flap idler hinge fitting with a new or serviceable part. This action is necessary to prevent failure of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148 due to fatigue cracking, which could result in a deflected flap that may cause asymmetric lift and consequent reduced controllability and structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 15, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–345–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–345–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–345–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–345–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the manufacturer indicating that it is necessary to repetitively inspect for cracking of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148 on certain McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F airplanes; and Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. The original safe life limit (SLL) of the flap idler hinge fitting was 50,000 landing cycles. The SLL was increased to 80,500 landing cycles and was incorporated in the Safe Life Limit Report, MDC–J0005. When the increase was made, an inspection requirement was established to ensure that a fatigue crack in the flap idler hinge fitting would not remain undetected. However, the inspection was never implemented. This condition, if not corrected, could result in failure of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148 due to fatigue cracking, which could result in a deflected flap that may cause asymmetric lift and consequent reduced controllability and structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin DC9–57–225, dated December 10, 2002, which describes the following procedures:

1. Performing repetitive high frequency eddy current inspections for cracking of the counterbore of the two lower mounting holes and the lower forward edge of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148; and
2. Replacing the flap idler hinge fitting with a new part.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Proposed Rule and Service Bulletin

Although Boeing Service Bulletin DC9–57–225, dated December 10, 2002, describes procedures for reporting inspection findings to the airplane manufacturer, this proposed AD would not require that action.

Cost Impact

There are approximately 708 airplanes of the affected design in the worldwide fleet. The FAA estimates that 411 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $53,430, or $130 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 2 work hours per fitting to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. The cost of required parts would be between $1,894 and $4,439 per fitting. Based on these figures, the cost impact of the proposed replacement per fitting on U.S. operators is estimated to be between $831,864 and $1,877,859, or between $2,024 and $4,569 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–345–AD.

Applicability: Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; as listed in Boeing Service Bulletin DC9–57–225, dated December 10, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148 due to fatigue cracking, which could result in a deflected flap that may cause asymmetric lift and consequent reduced controllability and structural integrity of the airplane, accomplish the following:

Inspections

(a) Prior to the accumulation of 40,000 total landing cycles on the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148, or within 8,000 landing cycles on the fitting after the effective date of this AD, whichever occurs later: Do high frequency eddy current (HFEC) inspections for cracking of the counterbore of the two lower mounting holes and the lower forward edge of the flap idler hinge fitting at station Xw=333.148, per the Accomplishment Instructions of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Although the service bulletin specifies to report inspection findings to the airplane manufacturer, this AD does not include such a requirement.

Condition 1: No Crack Is Found

(b) If no crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, install a new nut, plain washer, and pre-load indicating (PLI) washer per the Accomplishment Instructions of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings on the fitting until the replacement required by paragraph (e) of this AD is done.

Condition 2: Crack Is Found

(c) If any crack is found during any inspection required by this AD: Before further flight, replace the cracked flap idler hinge fitting with a new or serviceable fitting having a part number identified under the ''New Part Number'' column of the applicable table shown in paragraph 2.C.1. of the Material Information section of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Do the replacement per the Accomplishment Instructions of the service bulletin.

Reinstatement of Inspections

(d) Prior to the accumulation of 40,000 total landing cycles on any new or serviceable fitting, do the HFEC inspections required by paragraph (a) of this AD. Repeat the HFEC inspections thereafter at intervals not to exceed 1,000 landing cycles on the fitting until the replacement required by paragraph (e) of this AD is done.

Replacement

(e) Prior to the accumulation of 80,500 total landing cycles on the flap idler hinge fitting, replace the fitting with a new or serviceable fitting having a part number identified under the ''New Part Number'' column of the applicable table shown in paragraph 2.C.1. of the Material Information section of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Do the replacement per the Accomplishment Instructions of the service bulletin. Repeat the replacement thereafter at intervals not to exceed 80,500 total landing cycles on the fitting.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on January 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1912 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. This proposal would require replacement of landing gear control handle components with new, improved components. This action is necessary to prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–157–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from

Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York, 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–157–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. TCCA advises that there have been two in-flight incidents where the slider within the landing gear control handle (LGCH) fractured during gear selection. This condition, if not corrected, could result in an inability to lower or retract the landing gear using the LGCH, which could result in use of Emergency Procedures using the landing gear manual release.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R–32–084, dated May 17, 2002, which describes procedures for replacing the landing gear control handle with a new landing gear handle, which eliminates the need for temporary periodic inspections for the existing landing gear control handle. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–03, dated February 3, 2003, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 184 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,960, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–157–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7375 through 7632 inclusive, certificated in any category; equipped with landing gear control handle assemblies, Canadair Part Number (P/N) 601R50967–7 (Vendor P/N 7–45502–1) or Canadair P/N 601R50967–9 (Vendor P/N 7–45502–3).

Compliance: Required as indicated, unless accomplished previously.

To prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release, accomplish the following:

Replacement

(a) Within 5,000 flight cycles after the effective date of this AD, or within one year after the effective date of this AD, whichever occurs first; replace the landing gear control handle with a new landing gear control handle, Canadair P/N 601R50967–11 (Vendor P/N 7–45502–5), per the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–084, dated May 17, 2002.

Exception to Service Bulletin Reporting

(b) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Maintenance Requirements Manual Revision

(c) Accomplishment of the actions in paragraph (a) of this AD constitutes terminating action for periodic crack inspections, as specified in Temporary Revision 2B–627 of Part 2 of the Maintenance Requirements Manual, Appendix B, Airworthiness Limitations.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–03, dated February 3, 2003.

Issued in Renton, Washington, on January 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1911 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 316

RIN 3084–AA96

Label For E-mail Messages Containing Sexually Oriented Material

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission (''FTC'' or ''Commission'') seeks comment on the proposed rule setting forth the mark that is to be included in commercial electronic mail (''e-mail'') that includes sexually oriented material. Section 5(d) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187 (Dec. 16, 2003) (''CAN–SPAM Act'' or ''the Act'') directs the Commission to prescribe, within 120 days of enactment of that law, clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material. Pursuant to this mandate and its authority under section 13(a) of the Act, the Commission issues this Notice of Proposed Rulemaking and requests public comment on the proposed rule requiring that the prescribed mark be placed on certain commercial e-mail.

DATES: Written comments will be accepted until February 17, 2003. Due to the time constraints of this rulemaking procedure, the Commission does not contemplate any extensions of this comment period or any additional periods for written comments or rebuttal comment. Comments that are not timely submitted and directly responsive to the specific questions set forth in Section G of this document may not be considered.

ADDRESSES: Comments should refer to ''Proposed Mark for Sexually Oriented Spam, Project No. P044405.'' Comments filed in paper form should also include this reference on their envelopes, and should be mailed or delivered, as prescribed in Section C of the Supplementary Information section, to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in Section C of the Supplementary Information section, to the following email box: *adultlabel@ftc.gov.* All federal government agency rulemaking initiatives are also available online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Kraden, (202) 326–2614 (e-mail: *adultlabel@ftc.gov*), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. The CAN–SPAM Act of 2003

On December 16, 2003, the President signed into law the CAN–SPAM Act. In enacting this legislation, Congress found, *inter alia,* as set forth in section 2 of the Act, that ''some commercial e-mail contains material that many recipients may consider vulgar or pornographic in nature.'' [1]

Indeed, citizens across the country have expressed concern over the increasing amount of unsolicited commercial e-mail that they receive and, most notably, the sexually explicit images that are often included in these e-mails.[2] This concern has prompted eighteen (18) states to enact legislation in recent years requiring a label to be attached to unsolicited commercial e-mails that include sexually explicit or

[1] CAN–SPAM Act at section 2(a)(5).

[2] A study done by FTC staff found that 17% of pornographic offers sent in a sampling of unsolicited commercial e-mail contained images of nudity that appeared automatically when a consumer opened the e-mail message. Over 40% of these sampled e-mails contained false statements in their ''From'' or ''Subject'' lines, making it more likely that recipients would open the messages without knowing that pornographic images would appear. False Claims In Spam, April 30, 2003, available at *http://www.ftc.gov/opa/2003/04/spamrpt.htm.*

obscene materials. While all of these state labeling requirements contain some variation on the words ''ADULT'' and ''ADVERTISEMENT,'' the requirements often differ on the placement and spelling of these words.[3] The CAN–SPAM Act creates a federal labeling requirement for such e-mail messages, and section 5(d) of the Act directs the Commission to prescribe clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material.

Section B. Proposed Mark For E-mail Messages Including Sexually Oriented Material

Pursuant to its mandate under section 5(d) of the Act and its authority under section 13(a) of the Act, and after consulting with the Department of Justice, the Commission hereby proposes that the phrase ''SEXUALLY–EXPLICIT–CONTENT:'' (hereinafter ''Proposed Mark'') be required to be displayed in capital letters as the first twenty-seven (27) characters in the subject line of any commercial e-mail message that includes sexually oriented material.[4] The Commission believes that this phrase, which is derived from the definition of sexually oriented materials in section 5(d)(4) of the CAN–SPAM Act, will provide the most accurate description of the images included in a commercial e-mail that includes sexually oriented materials.[5] For that reason, the Commission believes that the Proposed Mark will most clearly, conspicuously and effectively alert the recipient to the fact that an e-mail includes sexually oriented material that he or she may find objectionable.

In addition, the Commission added hyphens between the words in order to facilitate appropriate filtering. Specifically, the Commission is concerned that a filter set to block a simple English phrase like ''sexually explicit content'' could prevent delivery of an e-mail from an anti-pornography group that used the phrase within the content of their message. Use of hyphens creates a unique mark calculated to avoid this problem. In addition, the Commission believes that the addition of dashes between the three words and a colon and a space after the phrase ''SEXUALLY EXPLICIT CONTENT'' will serve to set off the Proposed Mark and help to make it more unique and prominent.

The Commission also considered proposing use of the mark ''adult advertisement.'' While many states across the country have labeling requirements that use abbreviated variations of the words ''adult'' and ''advertisement,'' the Commission believes that use of the word ''adult'' in the proposed mark would not necessarily provide a recipient with the most effective notice of what that e-mail contains. There are many products or services (such as tobacco, alcohol, and gambling) that could be considered ''adult'' in nature. For this reason, the Commission believes that any proposed mark or notice must include some mention of the ''sexual'' images that a recipient can expect to see should he or she decide to open a labeled e-mail.

In addition to establishing the required mark, the proposed rule tracks the elements of section 5(d)(1) of the Act, requiring that an e-mail message that contains sexually oriented material include: Clear and conspicuous identification that the message is an advertisement or solicitation; a clear and conspicuous opt-out notice; a functioning return e-mail address or other Internet-based mechanism for opt-outs; a valid physical postal address of the sender; and a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following a sender's provided instructions on how to access, or activate a mechanism to access, the sexually oriented material.

The proposed rule also tracks section 5(d)(2) of CAN–SPAM by exempting situations where a recipient has given his or her prior consent to receipt of a message. In addition, the proposed rule clarifies that certain terms taken from the Act and appearing in the proposed rule have the definitions prescribed by particular referenced sections of the Act.[6] Finally, § 316.1(d) is a severability provision that provides that if any portion of the rule is found invalid, remaining portions will survive.

Section C. Invitation To Comment

All members of the public are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning the Proposed Mark and the proposed rule. The Commission invites written comments to assist it in ascertaining the feasibility and effectiveness of the Commission's Proposed Mark and proposed rule. Comments may be filed with the Commission in either paper or electronic form, and must be filed on or before February 17, 2003.

1. A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[7]

2. A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an email message sent to the following email box: *adultlabel@ftc.gov*

3. Regardless of the form in which they are filed, all timely and responsive comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying on the Commission Web site at *www.ftc.gov* and at its principal office. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC web site.

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[3] The different state labels are ''ADV:ADLT'' (Alaska, Illinois, Indiana, Kansas, Maine, Missouri, New Mexico, South Dakota, and Tennessee); ''ADV:ADULT'' (Arkansas and Utah); ''ADV–ADULT'' (Louisiana, Minnesota, North Dakota, Oklahoma, and Pennsylvania); ''ADV: ADULT ADVERTISEMENT'' (Texas); and ''ADULT ADVERTISEMENT'' (Wisconsin).

[4] The phrase ''SEXUALLY–EXPLICIT–CONTENT'' comprises 25 characters, including the dashes between the three words. The colon (:) and the space following the phrase are the 26th and 27th characters and are included to set off the Proposed Mark and help make it more prominent.

[5] See § 5(d)(4) of the Act. Although the definition of ''sexually oriented material'' refers to ''sexually explicit conduct,'' the Commission proposes substituting the word ''content'' for the word ''conduct'' in the Proposed Mark because the substance of an e-mail message is more accurately defined by use of the word ''content.''

[6] Most of the terms listed in § 316.1(c) occur in the text of the proposed rule; several of them are not in the rule text, but are listed there because CAN–SPAM incorporates and defines them within the definition of another term. For example, the term ''procure'' is listed in the proposed rule's definitions [at § 316.1(c)(7)] because the Act defines and includes that term in another defined term, ''initiate,'' defined in the rule at § 316.1(c)(5).

[7] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Section D. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

Section E. Paperwork Reduction Act

The Commission has determined that the proposed rule does not include a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320). The Proposed Mark that the proposed rule requires to be displayed in the subject line ''is information originally supplied by the federal government.'' See 5 CFR 1320.3(c)(2).

Section F. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The FTC does not expect that the Proposed Mark will have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis.

1. *Reasons for the proposed rule.*

Section 5(d) of the CAN–SPAM Act directs the Commission to prescribe, within 120 days of enactment of that law, clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material. The proposed rule is intended to fulfill the obligations imposed by section 5(d).

2. *Statement of objectives and legal basis.*

The objectives of the proposed rule are discussed above. The legal basis for the proposed rule is § 5(d) of the CAN–SPAM Act.

3. *Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

In general the proposed rule will apply to any person or entity who initiates, originates or transmits a commercial e-mail message that contains sexually oriented material. Determining a precise estimate of the number of small entities subject to the proposed rule, or describing those entities, is not readily feasible because the assessment of whether an e-mail message contains sexually oriented material turns on a number of factors that will require factual analysis on a case-by-case basis. The Commission invites comment and information on this issue.

4. *Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement of including the Proposed Mark and the type of professional skills that will be necessary for inclusion of the Proposed Mark.*

The proposed rule does not impose any reporting or any specific recordkeeping requirements within the meaning of the Paperwork Reduction Act. The Proposed Mark would be included as the first twenty-seven (27) characters of the subject line of any commercial e-mail message that contains sexually oriented material. The Commission does not believe that the insertion of additional characters into the subject line of an e-mail will create a significant burden on persons or entities who initiate a commercial e-mail message that includes sexually oriented material. However, the Commission, as noted below, seeks further comment on the professional skills that will be needed to implement the proposed rule, the actual costs or expenditures, if any, of including the Proposed Mark in the subject line of commercial e-mail that contains sexually oriented material, and the extent to which these costs may differ or vary for small entities.

5. *Identification of other duplicative, overlapping, or conflicting federal rules.*

The FTC has not identified any other federal statutes, rules or policies that would conflict with the requirement that the Proposed Mark be included as the first twenty-seven (27) characters of the subject line of any commercial e-mail message that contains sexually oriented material. However, the Commission is requesting comment and information about any statutes or rules that may duplicate or conflict with the proposed rule, as well as any state, local, or industry rules or policies that require labeling on commercial e-mail messages that include sexually oriented material.

6. *Discussion of significant alternatives to the proposed rule that would accomplish the stated objectives of the CAN-SPAM Act and that would minimize any significant economic impact of the proposed rule on small entities.*

Section 5(d) of the CAN-SPAM Act directs the Commission to prescribe clearly identifiable marks or notices to be included in or associated with commercial e-mail that includes sexually oriented material. The proposed rule is intended to fulfill the obligations imposed by § 5(d). However, the Commission recognizes that there are a number of variations and alternatives to the wording contained in the Proposed Mark and also considered the phrases ''adult advertisement'' and ''sexually oriented material'' before ultimately deciding on the Proposed Mark. The FTC welcomes comment on any significant alternatives, consistent with the purposes of the CAN-SPAM Act, that would minimize the economic impact of the proposed rule on small entities.

Section G. Specific Issues for Comment

The Commission seeks comment on the proposed rule as set forth in this Notice. The Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed and factual supporting information whenever possible.

1. Are there any technical reasons why the Proposed Mark cannot be included in the subject line of e-mails that include sexually oriented materials?

2. Are there any technical reasons why the proposed rule will not be effective?

3. Are there any technical ways to make the proposed rule more effective?

4. Are there other notices or marks that would be more effective in achieving the objective of the statute, including, but not limited to, ''ADULT ADVERTISEMENT'' and ''SEXUALLY ORIENTED MATERIAL''? Why?

5. Is the proposed rule adequate to inform a recipient that an e-mail may include content that is objectionable or offensive due to its sexual nature?

6. Is there additional information that a mark or notice should include to ensure that a recipient is made aware that an e-mail includes sexually oriented material?

7. Will the inclusion of the Proposed Mark aid a filtering program in blocking or filtering e-mail messages that include sexually oriented material?

8. Is there additional information that a mark or notice should include to

ensure that a filtering program can effectively and efficiently filter such an e-mail?

9. Does the inclusion of punctuation (such as a colon or a dash) in the Proposed Mark in any way affect the ability of a filtering program to filter such an e-mail?

10. Would the proposed rule unduly burden either entities selling sexually oriented material through e-mail messages or those consumers who were interested in purchasing sexually oriented material offered to them through e-mail messages? How? Is this burden justified by offsetting benefits to consumers?

11. How can the Commission measure the effectiveness of the proposed rule in protecting consumers from unwanted sexually oriented e-mail messages?

12. Please describe what effect the proposed rule will have on small entities that initiate commercial e-mail messages that include sexually oriented material.

13. Please describe what costs will be incurred by small entities to ''implement and comply'' with the rule, including expenditures of time and money for: any employee training; acquiring additional professional skills; attorney, computer programmer, or other professional time; and preparing and processing relevant materials.

14. Are there ways the proposed rule could be modified to reduce the costs or burdens for small entities while still being consistent with the requirements of the CAN-SPAM Act?

15. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that require small entities or other regulated entities to include clearly identifiable marks or notices with commercial e-mail that contains sexually oriented material.

16. Are the definitions set forth referencing the CAN-SPAM Act acceptable or would commenters prefer that the legal definitions themselves be imported into the proposed rule from the CAN-SPAM Act?

List of Subjects in 16 CFR Part 316

Advertising, Business and industry, Computer technology, Consumer protection, Labeling

Accordingly, the Commission proposes to add a new part 316 of title 16 of the Code of Federal Regulations as follows:

PART 316—RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003

Sec. 316.1 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

Authority: Pub. L. 108–187.

§ 316.1 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Include in the subject heading for the electronic mail message the phrase ''SEXUALLY–EXPLICIT–CONTENT:'' in capital letters as the first twenty-seven (27) characters at the beginning of the subject line;[1] and

(2) Provide that the matter in the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase ''SEXUALLY–EXPLICIT–CONTENT:'' in a clear and conspicuous manner;[2]

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) A valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) Prior Affirmative Consent. Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) Definitions:

(1) The definition of the term ''affirmative consent'' is the same as the definition of that term in section 3(1) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(2) The definition of the term ''commercial electronic mail message'' is the same as the definition of that term in section 3(2) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(3) The definition of the term ''electronic mail address'' is the same as the definition of that term in section 3(5) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(4) The definition of the term ''electronic mail message'' is the same as the definition of that term in section 3(6) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(5) The definition of the term ''initiate'' is the same as the definition of that term in section 3(9) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(6) The definition of the term ''Internet'' is the same as the definition of that term in section 3(10) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(7) The definition of the term ''procure'' is the same as the definition of that term in section 3(12) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(8) The definition of the term ''protected computer'' is the same as the definition of that term in section 3(13) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(9) The definition of the term ''recipient'' is the same as the definition of that term in section 3(14) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(10) The definition of the term ''routine conveyance'' is the same as the definition of that term in section 3(15) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(11) The definition of the term ''sender'' is the same as the definition of that term in section 3(16) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(12) The definition of the term ''transactional or relationship messages''

[1] The phrase ''SEXUALLY–EXPLICIT–CONTENT'' comprises 25 characters, including the dashes between the three words. The colon (:) and the space following the phrase are the 26th and 27th characters.

[2] This phrase consists of twenty-seven (27) characters and is identical to the phrase required in § 316.1(a)(1).

is the same as the definition of that term in section 3(17) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(13) The definition of the term ''sexually oriented material'' is the same as the definition of that term in section 5(d)(4) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(d) Severability—The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–1916 Filed 1–28–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–026]

RIN 1625–AA00

Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the United States Coast Guard Island Pier. This action is necessary to provide for the security of the military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This security zone would prohibit all persons and vessels from entering, transiting through, or anchoring within a portion of the Oakland Estuary surrounding the Coast Guard Island Pier unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before March 29, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03–026), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS *Cole* and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular proposed rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist attack against these valuable national assets, the Coast Guard is proposing to establish a permanent security zone around and under the United States Coast Guard Island Pier. This security zone would help the Coast Guard to

prevent vessels or persons from engaging in terrorist actions against Coast Guard Cutters that moor at the Coast Guard Island Pier. Due to heightened security concerns and the catastrophic impact a terrorist attack on a Coast Guard Cutter would have on the crew on board and surrounding government property, it is prudent for the Coast Guard to establish a security zone for this location.

Discussion of Proposed Rule

The Coast Guard proposes to establish a fixed security zone around and under the Coast Guard Island Pier that encompasses all waters of the Oakland Estuary, extending from the surface to the sea floor, within approximately 150 feet of the pier. The perimeter of the security zone would commence at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46′53.6″ N and longitude 122°15′06.1″ W; thence out to the edge of the charted channel at latitude 37°46′52.3″ N and longitude 122°15′07.9″ W; thence along the edge of the charted channel to latitude 37°46′42.2″ N and longitude 122°15′50.5″ W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46′52.3″ N and longitude 122°15′48.8″ W, thence along the shoreline back to the beginning point, latitude 37°46′53.6″ N and longitude 122°15′06.1″ W.

This security zone is needed for national security reasons to protect Coast Guard Cutters, their crews, the public, transiting vessels, and adjacent waterfront facilities from potential subversive acts, accidents or other events of a similar nature. Entry into this zone would be prohibited unless specifically authorized by the Captain of the Port or his designated representative.

Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed rule restricts access to the waters encompassed by the security zone, the effect of this proposed rule would not be significant because: (i) The zone would encompass only a small portion of the waterway; (ii) the zone does not encroach into the charted channel; (iii) vessels would be able to pass safely around the zone; and (iv) vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the proposed zone is the minimum necessary to provide adequate protection for Coast Guard Cutters, their crews, other vessels operating in the vicinity, adjoining areas and the public. The entities most likely to be affected are tug and barge companies transiting the Oakland Estuary and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect owners and operators of private and commercial vessels, some of which may be small entities, transiting the Oakland Estuary. The proposed security zone would not have a significant economic impact on a substantial number of small entities for several reasons: The zone does not extend into the charted channel, vessel traffic can pass safely around the area, and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public would be advised of this security zone via public notice to mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office, San Francisco Bay, (510) 437–3073.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and

have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Location.* The following area is a security zone: All navigable waters of the Oakland Estuary, California, from the surface to the sea floor, 150 feet into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone would commence at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46′53.6″ N and longitude 122°15′06.1″ W; thence out to the edge of the charted channel at latitude 37°46′52.3″ N and longitude 122°15′07.9″ W; thence along the edge of the charted channel to latitude 37°46′42.2″ N and longitude 122°15′50.5″ W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46′52.3″ N and longitude 122°15′48.8″ W, thence along the shoreline back to the beginning point, latitude 37°46′53.6″ N and longitude 122°15′06.1″ W.

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement as necessary.

Dated: January 7, 2004.

Gerald M. Swanson,

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

[FR Doc. 04–1858 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–15–P

PATENT AND TRADEMARK OFFICE

37 CFR Part 11

[Docket No.: 2002–C–005]

RIN 0651–AB55

Changes to Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is extending the public comment period on proposed rules, USPTO Rules of Professional Conduct, published in the **Federal Register** on December 12, 2003 (68 FR 69442). This will allow additional time following publication on December 12, 2003, for public comments, including whether the Rules of Professional Conduct should include the revisions to the Model Rules as

amended by the American Bar Association at the end of its February 2002 Midyear Meeting, also known as the Ethics 2000 revisions.

DATES: You must submit your comments by Monday, April 12, 2004. The Office may not necessarily consider or include in the Administrative Record for the proposed rule comments that the Office receives after the close of this extended comment period or comments delivered to an address other than those listed below.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to: *ethicsrules.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop OED—Ethics Rules, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 or by facsimile to (703) 306–4134, marked to the attention of Harry I. Moatz. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½-inch disk accompanied by a paper copy. The comments will be available for public inspection at the Office of Enrollment and Discipline, located in Room 1103, Crystal Plaza 6, 2221 South Clark Street, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz ((703) 305–9145), Director of Enrollment and Discipline (OED Director), directly by phone, or by facsimile to (703) 305–4136, marked to the attention of Mr. Moatz, or by mail addressed to: Mail Stop OED—Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO published the proposed rules on December 12, 2003 (68 FR 69442) and provided a 60-day comment period that will end on February 10, 2004. We are extending the comment period on proposed rules 11.100 through 11.900 in subpart D until April 12, 2004, to allow the public additional time to provide us with their comments.

The Office seeks comments regarding proposed rules 11.100 through 11.900 in subpart D, in part, because the proposed rules do not contemplate inclusion of the Ethics 2000 revisions to the Model Rules of Professional Conduct. The Ethics 2000 revisions have not been widely adopted by state bars. Proposed rules 11.100 through 11.900, in large part, are based on the widely adopted Model Rules of Professional Conduct. The extended comment period provides the public an opportunity to address proposed rules 11.100 through 11.900, and whether the Ethics 2000 revisions should be included in the rules adopted by the Office.

Dated: January 22, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–1888 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–50–200405 (b); FRL–7614–6]

Approval and Promulgation of Implementation Plan: Revisions to South Carolina State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of South Carolina on November 19, 2003, for the purpose of establishing specific consultation procedures for the implementation of transportation conformity requirements. This SIP revision also incorporates the State's adoption of the Federal transportation conformity regulations verbatim. EPA is not taking action on portions of the transportation conformity regulations affected by *Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (D.C. Cir. 1999), including sections 102(c)(1), 118(e)(1), 120(a)(2), 121(a)(1), and 124(b). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, 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 rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 1, 2004.

ADDRESSES: Comments may be submitted by mail to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** section (sections IV.B.1. through 3.), which is published in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9044. Mr. Laurita can also be reached via electronic mail at *laurita.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 5, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–1819 Filed 1–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7612–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent of partial deletion of the Hubbell/Tamarack City parcel of the Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency, (EPA) Region V is issuing a

notice of partial deletion of the Hubbell/Tamarack City parcel of Operable Unit (OUI) of the Torch Lake Superfund Site (Site) located in Houghton County, Michigan, from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. The Hubbell/Tamarack City parcel of OUI includes, tailing and slag piles associated with the Torch Lake Superfund Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), have determined that all appropriate response actions under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of partial deletion of the Hubbell/Tamarack City parcel of the Torch Lake Superfund Site without prior notice of intent to delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action. If we receive timely adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by March 1, 2004.

ADDRESSES: Written comments should be addressed to: Dave Novak, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604, 312–886–7478 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Brenda Jones, Remedial Project Manager at (312) 886–7188, or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Record Center, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Lake Linden/Hubbell Public Library, 601 Calumet St., Lake Linden, MI 49945, (906) 296–0698, Monday through Friday 8 a.m. to 4 p.m., Tuesday and Thursday 6 p.m to 8 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931 (906) 482–4570, Monday, Tuesday and Thursday 10 a.m. to 9 p.m., Wednesday and Friday 10 a.m. to 5 p.m. and Saturday 12 p.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 14, 2004.

William E. Muno,

Acting Regional Administrator, Region V.

[FR Doc. 04–1544 Filed 1–28–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 04–02]

Optional Rider for Proof of Additional NVOCC Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing proof of financial responsibility for ocean transportation intermediaries. The Commission proposes to allow an optional rider for additional coverage to be filed with a licensed non-vessel-operating common carrier's proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the People's Republic of China.

DATES: Comments must be received no later than February 20, 2004. Requests for meetings to make oral presentations to individual Commissioners must be received, and the meetings completed, by this date as well. Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 2000, or earlier versions of these applications.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

Sandra A. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, (202) 523–5787, E-mail: *otibonds@fmc.gov.*

SUPPLEMENTARY INFORMATION: On January 22, 2004, the Federal Maritime Commission (''FMC'' or ''Commission'') granted in part and denied in part a petition for rulemaking (''Petition'') from the National Customs Brokers and Forwarders Association of America, Inc. (''NCBFAA''). Petition No. P10–03, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking.* NCBFAA, a trade association representing licensed ocean transportation intermediaries (''OTIs'') in the U.S., whose members it claims are linked to 90% of the U.S. oceanborne cargo, petitioned the Commission to change its rules to effectuate concessions made by the People's Republic of China (''PRC'' or ''China'') in a recently concluded U.S.-China Agreement on Maritime Transport (''Agreement''). The Agreement's associated Memorandum of Consultations provides that the Chinese government will not require U.S. NVOCCs to make a cash deposit in a Chinese bank, as long as the NVOCC: (1) Is a legal person registered by U.S. authorities; (2) obtains an FMC license as an NVOCC; and (3) provides evidence of financial responsibility in the total amount of RMB 800,000 or U.S. $96,000. Therefore, it appears that an FMC-licensed NVOCC that voluntarily provides an additional surety bond in the amount of $21,000, which by its conditions is responsive to potential claims of the Chinese Ministry of Communications (''MOC'') (as well as

other Chinese agencies) for violations of the RIMT, would be able to register in the PRC without paying the cash deposit otherwise required by Chinese law and regulation. However, because current FMC regulations do not provide any mechanism for NVOCCs to file proof of such additional financial responsibility with the FMC, the Commission proposes to amend its regulations in order to permit licensed NVOCCs to file such additional proof in the form of optional riders to the required NVOCC bond.

The rule the Commission proposes differs from that requested by NCBFAA in its Petition as described in the Commission's order granting the Petition in part and denying it in part. The rule changes proposed herein reflect the grant of that Petition in most substantive respects. However, while NCBFAA's Petition requests a rule that would ''provide that the bond would * * * be available for the payment of fines or reparation awards,'' the language proposed by NCBFAA does not include ''reparation awards'' imposed by the Chinese Ministry of Communications (''MOC''). NCBFAA Petition at 2. Thus, NCBFAA's request is internally inconsistent. Therefore we are proposing a rule which would relate only to ''fines and penalties'' imposed by MOC, as provided in NCBFAA's proposed language for the optional rider form. Comments on the proposed coverage of the optional rider are invited.

As requested by NCBFAA, the Commission proposes to amend its rules to add a new subsection to provide for the optional rider at § 515.25. As suggested by NCBFAA, the Commission proposes to provide for group security bonds by the addition of § 515.25(c), changes to § 515.21(b), and the addition of Appendix F. Finally, the Commission declines to propose changes requested by NCBFAA which would have the effect of creating a procedure by which the Commission would administer the payment of claims against these optional riders. NCBFAA Petition at 5. The Commission declines to propose such changes because it would be inappropriate for the Commission to be involved in the collection of claims arising from decisions of the MOC, whether involving reparations, fines or penalties. The issuers of such bonds may wish to propose language to be included in the optional rider itself that would relate to procedures by which claims may be exercised against the optional rider, such as whether the English language must be used for all claims, whether the surety will not pay any claim earlier than 30 days after it has been notified of the claim, or what documentation the surety will require before paying a claim. The Commission invites comments on this issue.

Pursuant to Rule 53(a) of the Commission's Rules of Practice and Procedure, 46 CFR 502.53(a), in notice-and-comment rulemakings the Commission may permit interested persons to make oral presentations in addition to filing written comments. The Commission has determined to permit interested persons to make such presentations to individual Commissioners in this proceeding, at the discretion of each Commissioner.

Interested persons may request one-on-one meetings at which they may make presentations describing their views on the proposed rule. Any meeting or meetings shall be completed before the close of the comment period. The summary or transcript of oral presentations will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Interested persons wishing to make an oral presentation should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chairman of the Federal Maritime Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that the majority of businesses that would be affected by this rule qualify as small entities under the guidelines of the Small Business Administration. The rule, however, would establish an optional provision for U.S. licensed NVOCCs, which may be used at their discretion. The rule would pose no economic detriment to small business entities. Rather, it would provide a cost effective alternative, than would otherwise be available, to assist licensed NVOCCs with their business endeavors in the PRC. As such, the rule would help to promote U.S. business interests in the PRC and facilitate U.S. foreign commerce.

This regulatory action is not a ''major rule'' under 5 U.S.C. 804(2).

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to be 1 hour per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Austin L. Schmitt, Deputy Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects for 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reports and recordkeeping requirements, Surety bonds.

Accordingly, the Federal Maritime Commission proposes to amend 46 CFR part 515 subpart C as follows:

Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. Revise 46 CFR 515.21(b) to add a new sentence at the end as follows:

§ 515.21 Financial responsibility requirements.

* * * * *

(b) * * * A group or association of ocean transportation intermediaries may also file an optional additional bond as provided for by § 515.25(c).

* * * * *

3. Amend 46 CFR 515.23 to add paragraph (d) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(d) The Federal Maritime Commission shall not serve as depository or distributor to third parties of optional bond riders as described in § 515.25(c), Appendix E to Subpart C of this Part [Optional Rider to Form FMC–48] or Appendix F to Subpart C of this Part [Optional Rider to Form FMC–69]. Administration of claims against such optional bond riders will be pursuant to the terms of the optional bond rider itself.

4. Revise 46 CFR 515.25 to add paragraph (c) to read as follows:

§ 515.25 Filing of proof of financial responsibility.

* * * * *

(c) Optional bond rider. Any person operating as an NVOCC in the United States as defined by § 515.2(o)(2), in addition to the bond required by § 515.21(a)(2), may file with the Commission proof of additional financial responsibility in the form of a rider as provided for in Appendix E or Appendix F of this Part.

5. Add Appendix E to read as follows:

Appendix E to Subpart C of Part 515—Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC–48) [Form 48A]

Form FMC–48A

RIDER

The undersigned [_____], as Principal and [_____], as Surety do hereby agree that the existing Bond No. [_____] to the United States of America and filed with the Federal Maritime Commission pursuant to Section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

An additional condition of this Bond is that $[_____] shall be available to pay any fines and penalties imposed by the Ministry of Communications of the People's Republic of China or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond.

2. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1 of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1 regardless of the number of claims.

3. This Rider is effective the [_____] day of [_____], 200[__], and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by written notice to the Federal Maritime Commission at its office in Washington, DC. The Surety also shall send notice to the Ministry of Communications of the People's Republic of China via telecopier or e-mail. Evidence of transmission of the notice to the Ministry of Communications shall constitute proof of notice. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission, or transmission of the notice to the Ministry of Communications, whichever occurs later. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

4. Bond No. [_____] remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this [____] day of [_____], 200[__],

[Principal]
By:

[Surety]
By:

Privacy Act and Paperwork Reduction Act Notice.

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984, 46 U.S.C. app. § 1718.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001 or e-mail: *secretary@fmc.gov.*

6. Add Appendix F to read as follows:

Appendix F to Subpart C of Part 515—Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69] [Form 69A]

Form FMC–69A

RIDER

The undersigned [_____], as Principal and [_____], as Surety do hereby agree that the existing Bond No. [_____] to the United States of America and filed with the Federal Maritime Commission pursuant to Section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

An additional condition of this Bond is that $[_____] shall be available to any NVOCC enumerated in Appendix A to pay any fines and penalties imposed by the Ministry of Communications of the People's Republic of China or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond. The Surety shall indicate the amount available to pay such fines and penalties on the Appendix A listing for each NVOCC wishing to exercise this option.

2. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1 of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1 regardless of the number of claims.

3. This Rider is effective the [_____] day of [_____], 200[__], and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by written notice to the Federal Maritime Commission at its office in Washington, DC. The Surety also shall send notice to the Ministry of Communications of the People's Republic of China via telecopier or email. Evidence of transmission of the notice to the Ministry of Communications shall constitute proof of notice. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission, or transmission of the notice to the Ministry of Communications, whichever occurs later. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

4. Bond No. [_____] remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this [____] day of [_____], 200[__],

[Principal]
By:

[Surety]
By:

Privacy Act and Paperwork Reduction Act Notice.

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984, 46 U.S.C. app. § 1718.

This is an optional form. Submission is completely voluntary. Failure to submit this

form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 or e-mail: *secretary@fmc.gov.*

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1808 Filed 1–28–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arabis perstellata* (Braun's Rock-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions to proposed critical habitat, reopening of comment period, and notice of availability of revised draft economic analysis.

SUMMARY: We, the Fish and Wildlife Service, give notice of a proposed extension of Units 18 (Scales Mountain), 19 (Sophie Hill), and 20 (Indian Mountain) and the addition of two new units in Rutherford and Wilson Counties, Tennessee (Unit 21-Grandfather Knob and Unit 22-Versailles Knob) to the proposed critical habitat for *Arabis perstellata* (Braun's rock-cress). We are reopening the comment period on the proposal to designate critical habitat for this plant species to allow all interested parties to comment on the proposed rule, including the new information regarding Units 18, 19, and 20, the two new proposed units in Tennessee (Units 21 and 22). We also announce the availability of a revised draft economic analysis of the proposed designation.

DATES: The comment period is hereby reopened until March 1, 2004. Comments should be received from all interested parties by the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528–7075.

3. You may send comments by electronic mail (e-mail) to: *timothy_merritt@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt, at the above address, telephone (931) 528–6481, extension 211; facsimile (931) 528–7075.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments on: (a) the original proposed critical habitat designation (June 3, 2003, 68 FR 33058); (b) the new information regarding the expanded, proposed critical habitat for three units in Tennessee and the addition of two new proposed critical habitat units in Tennessee which we present in this proposed rule document; and (c) the revised draft economic analysis. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of *Arabis perstellata* and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018-AI74'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly at our Tennessee Field Office (*see* **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous 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 inspection in their entirety.

The revised draft economic analysis is available on the Internet at *http://cookeville.fws.gov.* You may request copies by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501, or by calling Timothy Merritt, Tennessee Field Office, at telephone 931/528–6481, extension 211.

Background

Arabis perstellata (Braun's rock-cress) was listed as an endangered species

under the Endangered Species Act of 1973, as amended (Act) on January 3, 1995 (60 FR 56). On June 3, 2003, we published a proposed critical habitat designation for *Arabis perstellata* in the **Federal Register** (68 FR 33058). The proposed designation included 20 critical habitat units in Kentucky and Tennessee—14 units in Franklin County, Kentucky; 3 in Owen County, Kentucky; and 3 in Rutherford County, Tennessee. Our descriptions of the proposed Critical Habitat Units 1 through 17 in the June 3, 2003, proposal, and our intentions to propose these areas, as described in the June 3, 2003, document, remain unchanged.

In the proposed rule, we mentioned that we had received new information from the Tennessee Department of the Environment and Conservation (TDEC) (D. Lincicome, pers. comm. 2003) regarding the extension of the range of one of the known populations of *Arabis perstellata* and existence of one new population. Additional occurrences of the known population were found on Townsel Hill, west of the City of Murfreesboro between Newman and Coleman Hill Roads in Rutherford County, Tennessee. This site is adjacent to the proposed Sophie Hill critical habitat site (Unit 19) and belongs to the same private landowner. The other population is located on Grandfather Knob (Unit 21) between Cainsville and Spain Hill Roads in Wilson County, Tennessee. These occurrences of *Arabis perstellata* were located following the drafting of the proposed critical habitat rule. Because of time constraints due to a court-ordered deadline as well as budgetary constraints, we were unable to formally and adequately analyze the sites containing additional occurrences and a new population to determine if they were essential to the conservation of the species and warranted inclusion into critical habitat. We have since conducted an analysis of *Arabis perstellata* and its habitat on these two sites and have determined these areas to be essential to the conservation of *Arabis perstellata* (*see* discussion below). Therefore, we now propose them for inclusion in this proposed rulemaking.

During the open comment period (June 3, 2003, to August 4, 2003), we received additional information from TDEC regarding extended ranges of two other known populations (Units 18 and 20) and the discovery of a new population at Versailles Knob in Rutherford County, Tennessee. We have also analyzed this new information and determined that the extension of the populations at Units 18 and 20 and the new population at Versailles Knob (Unit 22) are essential to the conservation of *Arabis perstellata* (*see* discussion below). Consequently, we are reopening the comment period to allow for public comment on our proposal to revise the published proposed critical habitat designation for Units 18, 19, and 20 and to propose Units 21 and 22, as set forth in our Proposed Regulation Promulgation.

The revised proposed designation for *Arabis perstellata* now encompasses a total of approximately 648 hectares (ha) (1,600 acres (ac)) of upland habitat, approximately 328 ha (810 ac) in Kentucky and approximately 320 ha (790 ac) in Tennessee. This is an increase in the amount of land proposed as critical habitat for *Arabis perstellata* in Tennessee from the 80 ha (198 ac) originally proposed. The proposed designation and associated materials can be viewed at *http://cookeville.fws.gov.*

Evaluation of Documented New Populations of *Arabis perstellata*

When we originally proposed critical habitat for *Arabis perstellata* for 20 units in Kentucky and Tennessee, we used several factors in the selection of these units (June 3, 2003, 68 FR 33058). We assessed the objectives and criteria as discussed in the July 1997 final recovery plan for *Arabis perstellata*, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. Based on the objectives and criteria in the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after 5 years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata,* protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations. Consequently, in our proposal of June 3, 2003, we proposed 17 of the 37 sites containing known populations of *Arabis perstellata* in Kentucky as critical habitat. In Tennessee, we proposed three of the four known sites containing Arabis perstellata as critical habitat.

A survey for new populations of *Arabis perstellata* unrelated to this proposed critical habitat rule was conducted in the spring and early summer of 2003 by Tennessee Division of Natural Heritage personnel. During this survey effort, the distribution of *Arabis perstellata* was found to be more widespread at the three extant populations (Units 18, 19, and 20) and two new populations were documented (Grandfather Mountain and Versailles Knob). The expansion of the population of *Arabis perstellata* within Unit 19 and the newly documented population of the species on Grandfather Mountain were discussed in our June 2003 proposed critical habitat rule. However, the discovery of additional occurrences of *Arabis perstellata* that resulted in the proposed expansions of Units 18 and 20 and the newly documented population on Versailles Knob did not occur until the end of the comment period for the June 2003 proposed rule. The discovery of these occurrences and additional new populations of *Arabis perstellata* is significant because it has nearly doubled the size of the known distribution of the species in Tennessee. Based on this new information gathered during the 2003 survey efforts by TDEC, we are revising and enlarging the extent of critical habitat proposed on June 3, 2003 (68 FR 33058) for Units 18, 19, and 20, to include the new occurrences of *Arabis perstellata* and its essential habitat.

Further, in our June 2003, proposed rule, we indicated that we were aware of 4 occurrences of *Arabis perstellata* in Tennessee, of which, we proposed 3 as critical habitat. As a result of the new information from the TDEC surveys, we have learned that the site in Davidson County, Tennessee, which was not proposed as critical habitat, actually contains a different plant species. The species at this site has been identified as *Arabis shortii* (Short's rockcress).

We are also revising 68 FR 33058 to add a proposal to designate as critical habitat the sites where the newly documented populations of *Arabis perstellata* were found on Grandfather Mountain (Unit 21) in Wilson County, Tennessee, and also that on Versailles Knob (Unit 22) in Rutherford County, Tennessee. Both areas contain one or more of the primary constituent elements for *Arabis perstellata*. In addition, the two newly discovered populations increase the present distribution of the plant throughout its southern range. Previously, only three populations of *Arabis perstellata* were known to occur in Tennessee. The discovery of these two new populations, with well over 100 plants each, increases the number of populations in Tennessee from 3 to 5. Because of the limited known distribution of *Arabis perstellata*, and because the populations in Tennessee are geographically disjunct from the 37 *Arabis perstellata*

populations in Kentucky, all 5 populations in Tennessee have been determined to be essential to ensure the plant's long-term conservation in order to meet the recovery plan criteria of having protected populations distributed throughout the species' range of Kentucky and Tennessee.

Proposed Revisions to Units 18, 19, and 20 and Proposed Units 21 and 22

Unit 18. Scales Mountain in Rutherford County, Tennessee

This unit is located on private property west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. Based on the new information, *Arabis perstellata* has now been documented on all three knobs of Scales Mountain. The plant and habitat are most abundant on the central and eastern knobs of Scales Mountain. However, our original proposed designation of critical habitat for this unit, approximately 36 ha (89 ac) in size, only included the eastern knob. The central and eastern knobs are estimated to contain more than 200 plants, while the western knob contains approximately 100 plants (TDEC 2003). We believe that the *Arabis perstellata* plants found on these three knobs comprise a single population. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. We, therefore, are revising Critical Habitat Unit 18 proposed in 68 FR 33058 to include all three knobs of Scales Mountain. The revised critical habitat unit is approximately 103 ha (255 ac) in size and is fully under private ownership.

Unit 19. Sophie Hill in Rutherford County, Tennessee

In our June 2003, proposed critical habitat (68 FR 33058), we identified Unit 19 as being approximately 16 ha (40 ac) in size and located west of the City of Murfreesboro on Sophie Hill, which lies between Newman and Coleman Hill Roads. During the 2003 surveys by TDEC, in excess of 300 *Arabis perstellata* plants were documented on the adjacent Townsel Hill. This population is larger than that found on Sophie Hill, which is estimated to contain approximately 200 plants. Due to the physical proximity of the two locations, Sophie Hill and Townsel Hill, we believe that the occurrences of *Arabis perstellata* documented at these sites are one population, containing over 500 standing plants. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. Accordingly, we are expanding the Critical Habitat Unit 19 proposed in 68 FR 33058 to include the Townsel Hill occurrences. The new size of this unit would be 53 ha (132 ac). Both hills are privately owned.

Unit 20. Indian Mountain in Rutherford County, Tennessee

Unit 20 is located west of the City of Murfreesboro on Indian Mountain, between Highway 96 and Coleman Hill Road. During the development of our June 2003 proposed critical habitat (68 FR 33058), we believed that that *Arabis perstellata* occurred only on the eastern and central knobs of Indian Mountain. However, based on the survey efforts by TDEC (2003), *Arabis perstellata* has now been documented to be abundant on all three knobs of Indian Mountain, including two new occurrences that together contain more than 300 plants in good to excellent habitat. Because of the proximity of the occurrences, it is assumed that these occurrences constitute one population. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. Consequently, we are revising the critical habitat proposed in 68 FR 33058 for Unit 20 to include all three knobs of Indian Mountain. The resulting Unit 20 is estimated to be 87 ha (214 ac) of privately owned land.

Unit 21. Grandfather Knob in Wilson County, Tennessee

During the 2003 surveys by TDEC, two new occurrences of *Arabis perstellata* were located on Grandfather Knob in Wilson County, Tennessee. This finding represents the first documented occurrence of *Arabis perstellata* in Wilson County. The plant and its habitat are abundant at both sites. More than 150 plants occur at the two sites, and due to their physical proximity, we believe that they comprise a single population. This population is 20 miles (32 kilometers) from the nearest extant *Arabis perstellata* population in Tennessee, making this an important find from the aspect of reducing the probability of a catastrophic event impacting so many populations (Units 18, 19, and 20 all occur within close proximity of each other). The site contains one or more of the primary constituent elements essential for the conservation of *Arabis perstellata*. Therefore, we are revising 68 FR 33058 to add a proposal to designate 43 ha (106 ac) on Grandfather Knob as new Critical Habitat Unit 21. The site is privately owned.

Unit 22. Versailles Knob in Rutherford County, Tennessee

During the 2003 surveys by TDEC, one new occurrence was found on Versailles Knob in Rutherford County, Tennessee. More than 200 plants were documented to occur on this knob. This population is 11 miles (18 kilometers) from the nearest extant *Arabis perstellata* population in Tennessee, which also makes this an important find from the aspect of reducing the probability of a catastrophic event impacting so many populations (Units 18, 19, and 20 all occur within close proximity of each other). Because the site contains one or more of primary constituent elements essential for the conservation of *Arabis perstellata*, we are revising 68 FR 33058 to add a proposal to designate approximately 34 ha (83 ac) Versailles Knob as new Critical Habitat Unit 22. The site is privately owned.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided that such exclusion will not result in the extinction of the species. In the June 3, 2003, proposed designation of critical habitat for *Arabis perstellata* (68 FR 33058), we announced the availability of the draft economic analysis of the proposed designation. However, as a result of the subject revisions to the proposed critical habitat discussed herein, we have reevaluated the potential economic impact of the proposed designation, taking into consideration the revisions to Units 18, 19, and 20 and the inclusion of Units 21 and 22. Accordingly, we have prepared a revised draft economic analysis of the

proposed critical habitat designation, and are making it available for review and comment (*see* **ADDRESSES** section).

Author

The primary author of this document is Timothy Merritt (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to amend the proposed amendments to part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as published in the **Federal Register** of June 3, 2003, starting on page 33058, as follows:

PART 17—[AMENDED]

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

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

2. In § 17.96, as proposed to be amended by 68 FR 33058, amend paragraph (a) by removing paragraphs (21) through (24) in the entry for ''Family Brassicaceae'' *Arabis perstellata* and adding new paragraphs (21) through (26), to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress).

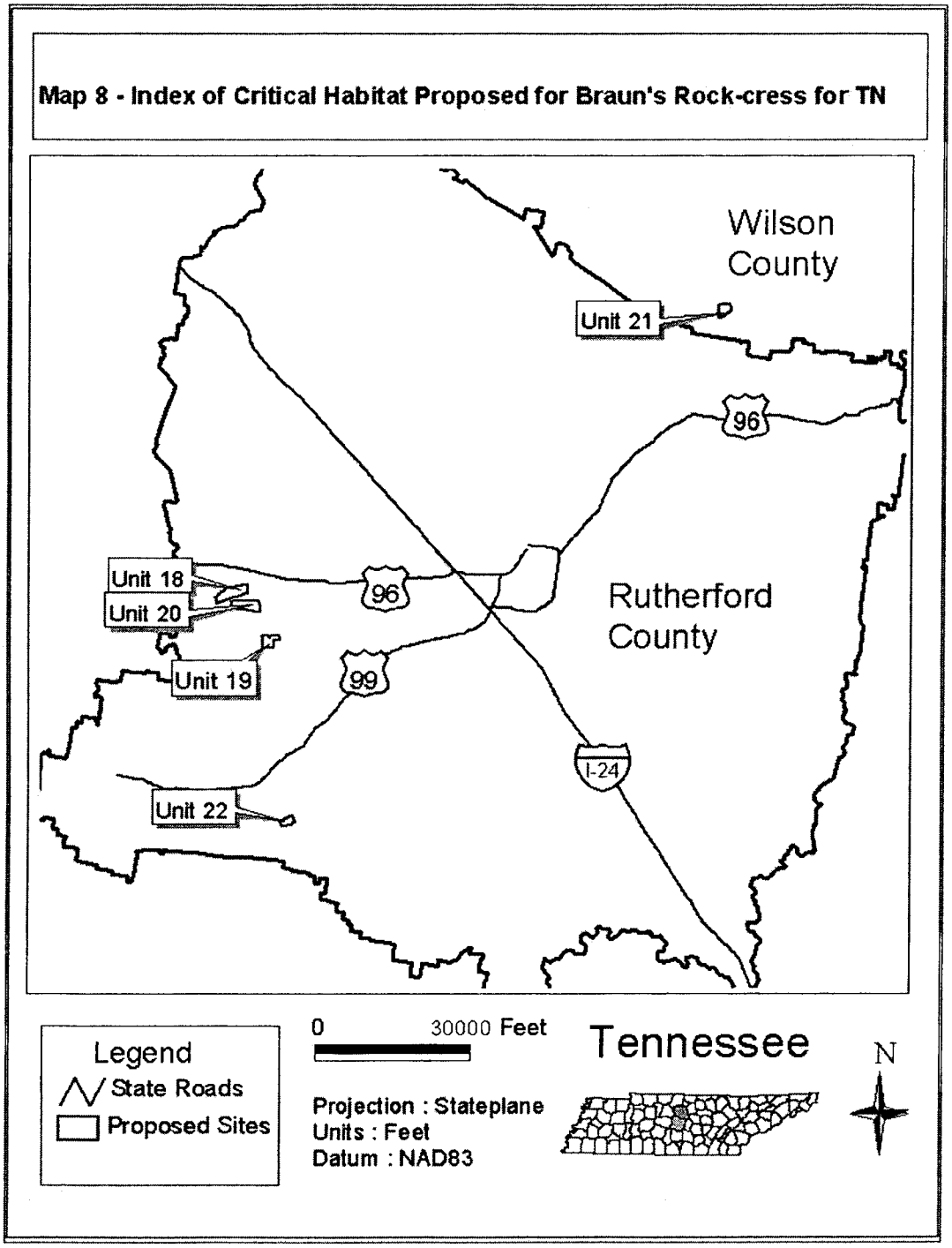
* * * * *

(21) Index map for Tennessee.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped using Tennessee State Plane, NAD 83, coordinates.

(ii) Map 8, Index of Critical Habitat Proposed for Braun's Rock-cress, Tennessee, follows:

BILLING CODE 4310–55–P



(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.

From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N): 1796404.35, 548844.10; 1797871.97, 548892.57; 180101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19; 1794371.09, 545752.45; 1794062.13, 546793.75.

(23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N): 1804332.94, 539670.12; 1805958.29, 539809.20; 1806144.40, 538804.21; 1805404.04, 538616.52; 1805093.00, 538606.55; 1804993.27, 537830.88; 1804984.80, 537416.39; 1803035.85, 537424.55; 1803073.16, 537763.87; 1802727.95, 539581.93; 1802926.61, 539663.11; 1803161.20, 539608.97; 1803341.75, 539609.00; 1803432.02, 539563.84; 1803585.87, 539636.20; 1803702.77, 539762.44; 1803829.05, 539789.45; 1804392.03, 539266.92.

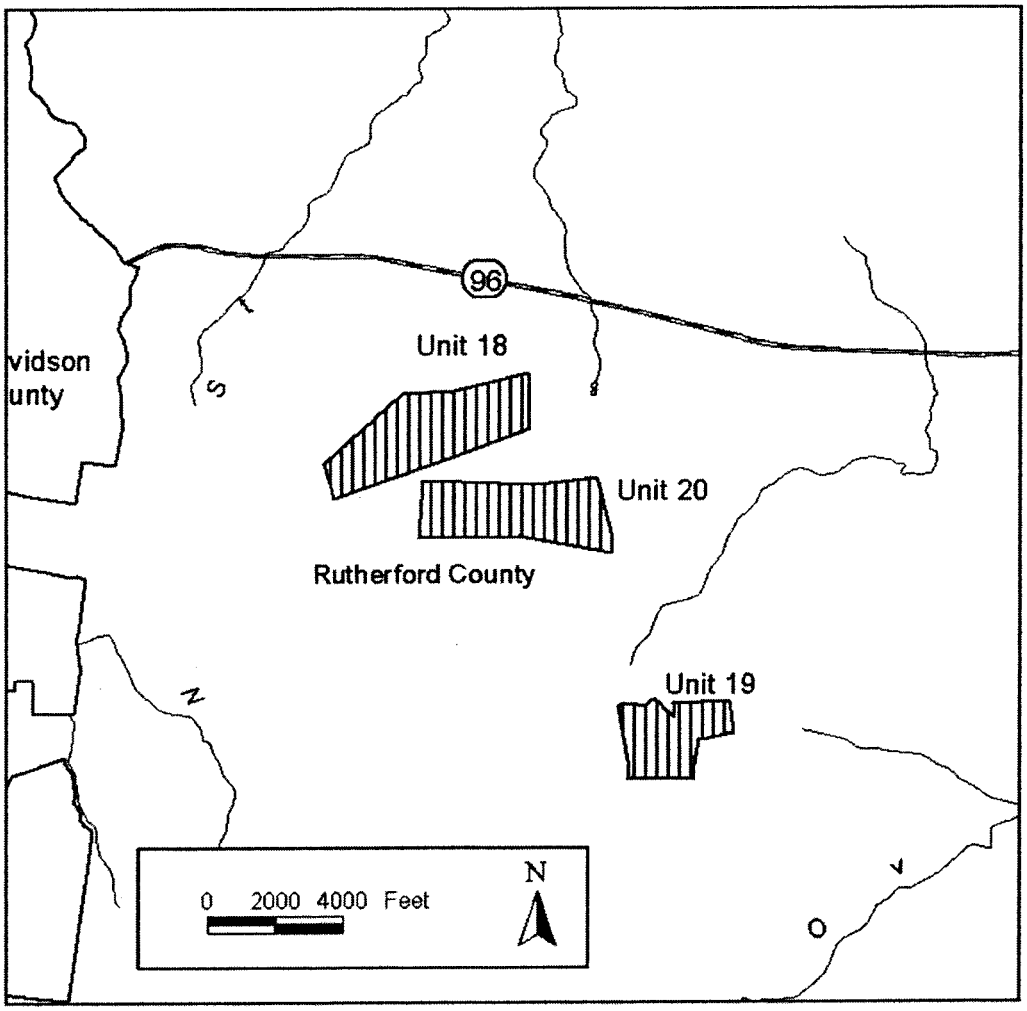
(24) Unit 20: Indian Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N): 1797048.41, 546270.92; 1800392.46, 546150.00; 1802111.40, 546443.12; 182532.04, 544775.34; 1802592.03,

544138.56; 1799853.77, 544635.03; 1796909.24, 544584.61.

(ii) Map 9, Units 18, 19, and 20. Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

Map 9 - Units 18, 19 and 20: critical habitat for Braun's rock-cress in Tennessee.



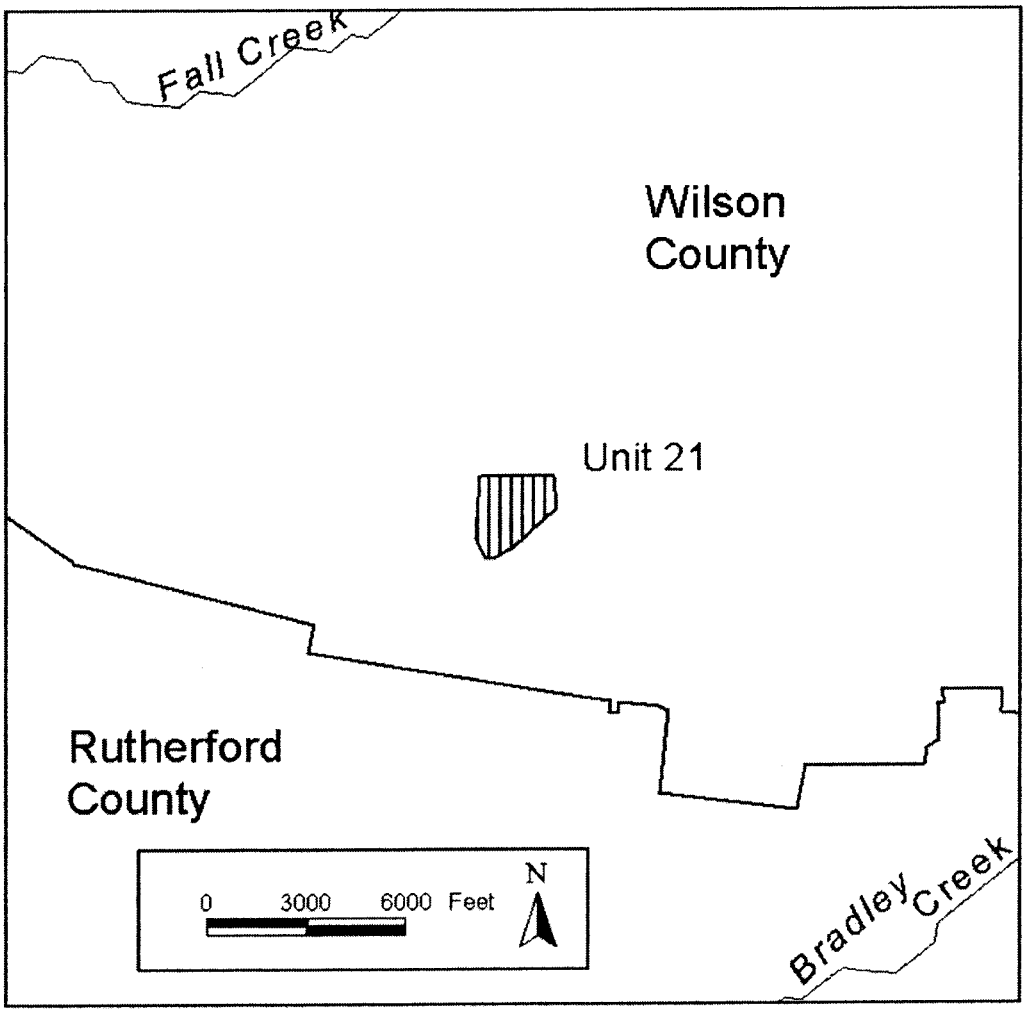
This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(25) Unit 21: Grandfather Mountain, Wilson County, Tennessee.

(i) From USGS 1:24,000 quadrangle Lascassas, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N): 1888463.64, 602182.29; 1890759.35, 602182.29; 1890842.07, 601189.55; 1889518.42, 599969.31; 1888877.28, 599638.40; 188670.46, 599638.40; 1888401.59, 600300.23.

(ii) Map 10, Unit 21. Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

Map 10 - Unit 21: critical habitat for Braun's rock-cress in Tennessee.



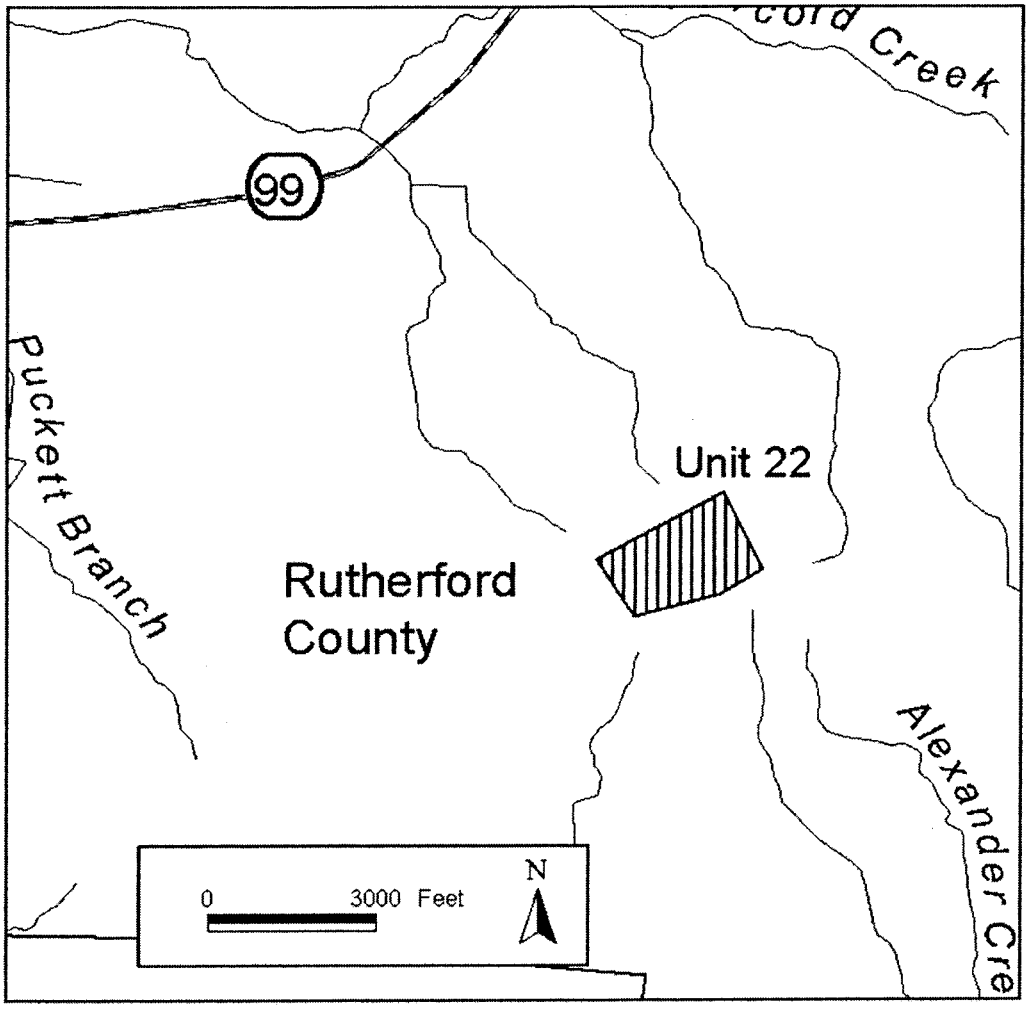
This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(26) Unit 22: Versailles Knob, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rover, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N): 1806361.65, 504515.38; 1808616.22, 505711.83; 1809308.27, 504327.51; 1808517.23, 503872.66; 1807034.03, 503477.14.

(ii) Map 11, Unit 22. Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

Map 11 - Unit 22: critical habitat for Braun's rock-cress in Tennessee.



This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Dated: January 16, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–1625 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040105003–4003–01; I.D. 122203F]

RIN 0648–AR41

Fisheries of the Exclusive Economic Zone Off Alaska; General Limitations

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes amending regulations establishing pollock Maximum Retainable Amounts (MRA) by adjusting the MRA enforcement period for pollock harvested in the Bering Sea and Aleutian Islands management area (BSAI) from enforcement at anytime during a fishing trip to enforcement at the time of offload. This action is necessary to reduce regulatory discards of pollock caught incidentally in the directed fisheries for non-pollock groundfish species. The intended effect of this action is to better utilize incidentally

caught pollock in accordance with the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments must be received by March 1, 2004.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile to 907–586–7557. As an agency pilot test for accepting comments electronically, the Alaska Region, NMFS, will accept e-mail comments on this rule. The mailbox address for providing e-mail comments on this rule is MRA–0648–AR41@noaa.gov. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This proposed action is one of several adopted by the Council to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was published as a final rule January 3, 1998 (62 FR 63880), and established retention and utilization standards for pollock and Pacific cod. In June 2003, the Council adopted Amendment 79 to the FMP, which would establish a minimum groundfish retention standard (GRS) for specified vessels in the BSAI. Along with Amendment 79, the Council also adopted a revision to the MRA enforcement period for pollock harvested by non-American Fisheries Act (AFA) vessels in the BSAI. Prior to the June Council actions, the proposed GRS program and pollock MRA revision were considered as components of one action to reduce discard amounts in the BSAI. However, the Council recognized that the MRA change was simpler to implement than the GRS action and requested NMFS to expedite the proposed pollock MRA revision. In addition to these actions, the Council is considering sector allocations of BSAI groundfish and prohibited species, as well as the development of a fishery cooperative for non-AFA trawl catcher processors. The Council expects that the formation of a cooperative for non-AFA trawl catcher processors would eliminate the race for fish and provide vessel operators with the opportunity to change their behavior to avoid incidental catch and/or reduce discard amounts.

Maximum Retainable Amounts

Regulations at 50 CFR 679.20(e) establish rules for calculating and implementing MRA amounts for groundfish species or species groups that are closed to directed fishing. The MRA amount is calculated as a percentage of the retained amount of species closed to directed fishing relative to the retained amount of basis species or species groups open for directed fishing. Table 11 to 50 CFR 679 lists retainable percentages for BSAI groundfish species. Amounts that are caught in excess of the MRA percentage must be discarded. Current regulations limit vessels to MRA amounts at any time during a fishing trip. Under regulations implementing Amendment 49 to the FMP, vessels must retain all incidental catch of pollock and Pacific cod up to the MRA amount and discard the rest.

The EA/RIR/IRFA for this action [see **ADDRESSES**] demonstrates that over the last four years (1999 through 2002), pollock discards constitute the largest component of discards by non-AFA trawl catcher processors operating in the BSAI (18 percent of all non-AFA trawl catcher processor discards are pollock). Current levels of pollock caught incidentally by non-AFA trawl catcher-processors also significantly exceed the MRA. The analysis also demonstrated that other non-AFA vessels are only seldom affected by the MRA for pollock on a haul-by-haul basis. Because of the current regulatory structure which requires all non-AFA vessels to retain all incidental catch of pollock up to the MRA and to discard pollock at any point in time in which the MRA is exceeded, it is presumed that all of these pollock discards are regulatory discards.

This proposed action is intended to increase the retention of pollock by non-AFA vessels in the BSAI, while not increasing the overall amount of pollock harvested by adjusting the MRA enforcement period so that the MRA for pollock caught in the BSAI by non-AFA vessels would be enforced at the time of offload rather than at any time during a fishing trip. Under the proposed regulations, vessels would be able to choose to retain pollock in excess of the MRA as long as the amount retained at the time of offload is at the current MRA percentage with respect to basis species or species groups retained. By allowing vessels to manage their MRA percentage for pollock on an offload-to-offload basis, additional pollock may be retained over the course of a fishing trip. For example, if a vessel operator catches pollock early in a trip in excess of the MRA amount, he or she may choose to retain the pollock and move to an area with lower incidental catch rates of pollock, thereby lowering the percentage of pollock retained, with respect to other basis species, prior to the offloading of catch. As long as the amount of pollock on board the vessel is at the appropriate MRA at the time of offload, the vessel operator would be in compliance.

Participants in the directed pollock fishery have expressed concern that the adjusted enforcement period could lead to additional pollock catches and necessitate an increase in the amount of pollock allocated to the incidental catch allowance (ICA), with a consequent reduction in the amount of pollock allocated to the AFA directed pollock fisheries. The EA/RIR/IRFA prepared for this action demonstrates that the actual amount of incidentally caught pollock is consistently lower than the pollock ICA. However, the analysis acknowledges that if pollock were a desired catch for the non-AFA fleet, the proposed change to MRA regulations would allow vessels additional opportunity to ''top off'' their trips with additional pollock. While this behavior currently is possible, it has not been demonstrated by vessels in the non-AFA fleet.

Currently, fisheries managers establish the pollock ICA through the annual harvest specification process. The ICA for an upcoming year is established based on an examination of the historical incidental catch of pollock in non-pollock fisheries. NMFS provides information to the Council annually to guide the ICA specification and will continue to make this

information available to the Council and interested public. The amount of pollock harvested by non-AFA eligible vessels would continue to be well documented. Should incidental catch rates or amounts increase, the Council could initiate regulatory action to reduce incidental catch rates to levels closer to historical amounts. Any adjustment to the ICA would occur within the annual harvest specification process.

Current regulations at § 679.20(d)(1)(iii)(B) require vessels to be in compliance with MRA regulations at any time during a fishing trip. The proposed action would enforce MRA amounts for pollock caught by non-AFA vessels in the BSAI only at the time of offload. Current regulations at § 679.20(e) do not differentiate between catcher vessels and catcher processors. However, the definition of fishing trip is different for each vessel type and the MRA is enforced differently for each vessel type. Proposed regulations would clarify MRA requirements for catcher vessels at § 679.20(e)(2)(iv). Catcher vessels may fish within more than one statistical reporting area during the same fishing trip. The proposed regulations would clarify that the lowest MRA for any of the areas where fish are harvested during a fishing trip would apply at any time during the fishing trip and would be enforceable instantaneously. This is the existing enforcement protocol. MRA requirements for catcher processors at § 679.20(e)(2)(v) would remain unchanged except to reference the proposed change to the pollock MRA accounting period from anytime during a fishing trip to the time of offload. These proposed changes would apply to vessels fishing in the Gulf of Alaska (GOA) and the BSAI.

The proposed regulations at § 679.20(e)(2)(vi) would make the MRA for pollock caught by non-AFA eligible vessels in the BSAI management area enforceable at the time of offload.

Increased Retention/Increased Utilization (IR/IU)

Proposed changes to the IR/IU regulations would apply to vessels fishing in the Gulf of Alaska (GOA) and the BSAI

Regulations at 679.27(c)(2) describe retention requirements for IR/IU species. In § 679.27, paragraphs (c)(2)(i)(B), (c)(2)(ii)(B), (c)(2)(iii)(B), and (i)(2) refer to the ''MRB'' amount when directed fishing for an IR/IU species is prohibited. ''MRB'' is an acronym for maximum retainable bycatch and was changed to MRA due to inconsistency with the definition of bycatch in the Magnuson-Stevens Act. The regulatory text in these paragraphs would be amended to reflect current language and to provide consistency with other regulatory text.

Current regulations at § 679.27(c)(2)(ii)(B) require vessels to retain IR/IU species up to the MRA amount for that species and are enforced at any time during a fishing trip. The proposed regulations would provide an exception for pollock caught by non-AFA eligible vessels in the BSAI.

Classification

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

An initial regulatory flexibility analysis (IRFA) was prepared, required by section 603 of the Regulatory Flexibility Act (RFA).

The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are described above. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows:

The change in the enforcement period for the pollock MRA would apply to all non-AFA vessels that catch BSAI pollock as an incidental species, regardless of vessel size, gear type or target fishery. However, non-AFA trawl catcher processors (head-and-gut sector) catch significant amounts of pollock incidentally in other groundfish fisheries. Other non-AFA vessels are seldom affected by the MRA for pollock on a haul-by-haul basis.

In recent years, 23 to 24 vessels in the head-and-gut trawl catcher processor sector have fished in the BSAI. Ownership of the active vessels is concentrated in 10 companies. One of the listed companies is an independent company that acts as a manager of four vessels, each of which is an independently owned corporation with different ownership structures. Therefore, the IRFA treated these vessels as four independent companies. Analysis of the three year average of estimated annual receipts of the head-and-gut trawl catcher processor sector indicated that 1 of the 13 companies operating in the sector in 2002 would have been defined as a small entity with receipts of less than $3.5 million. The company operates a single vessel that is less than 125 feet.

During the development of the GRS, several options regarding the MRA for pollock were developed and discussed, including several options relating to the time interval for enforcement, as well as options to alter the MRA percent during the season. The status quo is the first alternative to the preferred action. Under the status quo alternative, the MRA for pollock continues to be enforced on an instantaneous basis, i.e., it is unlawful for a vessel to retain pollock in an amount that exceeds the MRA at any time during a fishing trip. The status quo would not lead to increased retention of pollock caught by non-AFA vessels in the BSAI. The status quo was rejected because it would not accomplish the objectives of the action. As noted, this alternative remains the ''baseline'' for purposes of the MRA analysis.

A second alternative was considered, i.e., to change the MRA enforcement interval for pollock. This alternative would change the enforcement of the pollock MRA to a set interval of time. Modifying the time of enforcement to an interval of time would allow vessels that would have otherwise been forced to discard pollock to retain additional pollock, as long as they were under the MRA for the specified interval. For example, suppose a vessel's first haul of a trip is 25 percent pollock. Under the current instantaneous enforcement rules, the vessel would be required to discard at least 5 percent of the haul. Under a modified enforcement interval the vessel would have the option of keeping the additional five percent, as long as the vessel's total retained pollock amounted to no more than 20 percent of retained non-pollock groundfish by the end of the specified enforcement interval. The MRA for pollock would remain at 20 percent. Only the enforcement accounting interval would be adjusted. Several enforcement intervals were considered as suboptions, but not adopted and are summarized in the EA/RIR/IRFA. While longer intervals were feasible from an enforcement perspective, they were judged by the Council as inconsistent with the problem statement and the goal to discourage covert targeting of pollock by non-AFA vessels. For example, if the MRA for pollock was calculated over the entire 'A' season it would be quite easy for non-AFA vessels to focus an entire trip on pollock (say, while roe content was at its peak) and still remain within the MRA. This would clearly be incongruous with the AFA which reserves the target pollock fishery exclusively for AFA eligible vessels and processors.

The third alternative considered was to change the MRA percentage for pollock. This option would adjust the MRA percentage for pollock to allow for greater retention by head and gut trawl catcher processor (HT-CPs). Increasing

the MRA percentage for pollock could increase the retention of pollock by reducing the number of instances when a vessel caught enough pollock to necessitate pollock discards. On the other hand, there is the possibility that increasing the MRA percentage of pollock would also increase the incentive to catch more pollock. While the HT-CP sector currently operates well under its ICA for pollock, raising the MRA percentage for pollock could increase the chance that the ICA would have to be increased if the overall amount of retained pollock approached the current ICA. If the ICA increased, it would reduce the amount of pollock available to the directed fishery.

The fourth alternative was also considered, namely, to allow fishery managers to adjust the MRA percentage for pollock in season. This option was rejected because the complexities of intra-season rulemaking made the option infeasible.

The preferred alternative is to change the enforcement interval of the pollock MRA to an offload to offload basis. Modifying the enforcement period to an offload to offload interval would allow vessels that would have otherwise been forced to discard pollock to retain additional pollock, as long as they were under the MRA for the trip. For example, suppose a vessel's first haul of a trip is 25 percent pollock. Under the current instantaneous enforcement rules, the vessel would be required to discard at least 5 percent of the haul. Under this alternative the vessel would have the option of keeping the additional five percent as long as the vessel's total retained pollock amounted to no more than 20 percent of retained non-pollock groundfish by the time of the next offload. The MRA for pollock would remain at 20 percent. Only the enforcement accounting interval would be adjusted.

While changing the enforcement interval for the pollock MRA is likely to result in an overall reduction of discards of pollock, the economic impact of the change on vessels specifically in the head and gut trawl catcher processor (HT-CP) sector is uncertain. The main factors that could determine the size and distribution of economic impact on the HT-CP sector are (1) the value of pollock relative to the value of groundfish normally caught by the sector, (2) the amount of pressure vessels operators are experiencing to reduce discards, and 3) strategic behavior of individual vessels.

If pollock has a lower relative value than the targeted species, and vessels operate without regard to pressure to reduce discards, the change in the enforcement interval is unlikely to have any significant economic effect vessels will continue to discard pollock at current levels, while remaining within the retention requirements of IR/IU regulations. If, on the other hand, vessels choose to reduce discards of pollock to alleviate increasing pressure from the Council and the public at large, they could experience negative economic consequences. Assuming vessel catch is constrained by hold space, the amount of product from higher-valued species that would be displaced by the increased retention of pollock, under this scenario, may be substantial.

If pollock has a higher relative value than other species in the catch, as it does during the pollock roe season, the impact on the HT-CP sector from changing the enforcement accounting interval could be positive. Currently, pollock catches appear to be higher during the first part of the trip compared to latter parts of the trip. Under the current regulations, vessels are likely to be forced to discard valuable pollock during the early part of the trip until they have harvested and retained sufficient amounts of non-pollock target species to build up a ''ballast'' of retained product, which they can count against retained pollock. Then later in the trip they can ''top-off'' if they wish. Thus under the current regulations vessels may be forced to ''catch pollock'' twice if they wish to retain the maximum amount of pollock allowed. With the change in the regulation, again assuming pollock is a desired species, vessels will have the option to keep pollock caught in the early part of the trip, even if they have not yet caught and retained sufficient non-pollock species to comply with the MRA. Because they are able to keep all pollock as it comes on board, it is unlikely that vessels will need to ''top-off'' later in the trip. Thus the proposed action may reduce overall pollock catches by the HT-CPs.

The alternative allows non-AFA vessels to retain additional pollock caught incidentally in the BSAI management area, thereby helping to meet the Council's goals and objectives to reduce discards in the groundfish fisheries off Alaska.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read 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 § 679.20, paragraphs (d)(1)(iii)(B) and (e)(2)(iv) are revised and paragraphs (e)(2)(v) and (e)(2)(vi) are added to read as follows:

§ 679.20 General Limitations.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) Retention of incidental species. Except as described in 679.20(e)(2)(vi), if directed fishing for a target species, species group, or the ''other species'' category is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(e) * * *

(2) * * *

(iv) For catcher vessels, the maximum retainable amount for vessels fishing during a fishing trip in areas closed to directed fishing is the lowest maximum retainable amount applicable in any area, and this maximum retainable amount must be applied at any time for the duration of the fishing trip.

(v) For catcher/processors fishing in an area closed to directed fishing for a species or species group and not subject to 679.20(e)(2)(vi), the maximum retainable amount for that species or species group applies at any time for the duration of the fishing trip.

(vi) For all vessels not listed in subpart F of this section, the maximum retainable amount for pollock harvested in the BSAI is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.

* * * * *

3. In § 679.27, the table in paragraph (c)(2) and the table in paragraph (i) are revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(c) * * *

(2) * * *

IF YOU OWN OR OPERATE A	AND	YOU MUST RETAIN ON BOARD UNTIL LAWFUL TRANSFER
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open,	all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited,	all fish of that species brought on board the vessel up to the MRA amount for that species.
	(C) Retention of an IR/ IU species is prohibited,	no fish or product of that species.
(ii) Catcher/processor	(A) Directed fishing for an IR/IU species is open,	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited,	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA amount for that species, except when exceeded as provided for in 679.20 (e)(2)(vi).
	(C) Retention of an IR/ IU species is prohibited,	no fish or product of that species.
(iii) Mothership	(A) Directed fishing for an IR/IU species is open,	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited,	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA amount for that species
	(C) Retention of an IR/ IU species is prohibited,	no fish or product of that species.

* * * * *

(i) * * *

IF...	then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must...
(1) directed fishing for an IR/IU species is open,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRA amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited,	equal zero

[FR Doc. 04–1810 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040115020–4020–01; I.D. 010204B]

RIN 0648–AR07

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Groundfish fisheries of the Exclusive Economic Zone (EEZ) off the coast of Alaska; Recordkeeping and Reporting

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to revise port codes (Tables 14a and 14b) used in data collection for the Federal groundfish fisheries in the EEZ off the coast of Alaska and the Individual Fishing Quota (IFQ) Program. This revision would remove unnecessary or potentially conflicting regulations, facilitate enforcement efforts, and standardize collection of port-of-landing information. The action is necessary to standardize collection and analysis of port information. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act) with respect to groundfish and to further the goals and objectives of the Alaska groundfish fishery management plans.

DATES: Comments must be received by March 1, 2004.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile to 907 586 7557. As an agency pilot test for accepting comments electronically, the Alaska Region, NMFS, will accept e-mail comments on this proposed rule. The mailbox address for providing e-mail comments on this proposed rule is RPC–0648–AR07@noaa.gov.

Copies of the Regulatory Impact Review (RIR) prepared for this proposed regulatory action are available from NMFS at Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall, or by

calling the Alaska Region, NMFS, at (907) 586 7228. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and by e-mail to David__Rostker@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. NMFS manages the IFQ Halibut Program under the Northern Pacific Halibut Act of 1982 (Halibut Act); implementing regulations are at 50 CFR part 300.60 through 300.65. General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

Tables 14a and 14b to Part 679 provide lists of ports in Alaska, California, Oregon, Washington, and Canada at which IFQ landings and Federal groundfish landings may be made. Two distinct coding systems are presented. These two systems identify the same ports using different codes. The codes were developed separately, one at NMFS and the other at the State of Alaska Department of Fish and Game (ADF&G).

The numerical codes identify ports where IFQ landings are made and are entered by participants when filing an IFQ prior notice of landing (PNOL) and when electronically reporting an IFQ landing (see 50 CFR part 679.5(l)). The alphabetical codes identify ports where groundfish landings are made. Alphabetical codes are entered by participants completing an ADF&G fish ticket and also by shoreside processor participants entering data into the NMFS' groundfish shoreside processor electronic logbook report (SPELR) (see 50 CFR part 679.5(c)).

Tables 14a and 14b would be revised as follows: (1) numerical codes that are no longer used for IFQ landings and that do not have a corresponding alphabetical code would be removed and (2) numerical codes for ports that are geographically close enough to be reported as one port would be combined.

By removing codes for ports that are not used by the fishing industry for IFQ landings, NMFS would create a more accurate list of viable port codes. This action also would reconcile port codes for both NMFS and ADF&G fishery documentation.

The proposed revisions to Tables 14a and 14b are shown in the following table:

Existing Port Information			Proposed Port Information		
Port Name	OLD Numerical Code	OLD Alpha Code	Action	NEW Numerical Code	NEW Alpha Code
Anchor Point	104	none	Remove 104	none	none
Auke Bay	108	none	Remove 108; combine into Juneau	136	JNU
Baranof Warm Springs	109	none	Remove 109	none	none
Beaver Inlet	110	none	Remove 110; combine Beaver Inlet into Dutch Harbor/ Unalaska.	119	DUT
Bellevue (Washington)	701	none	Remove 701	none	none
Blaine (Washington)	none	BLA	Add 717	717	BLA
Captains Bay	112	none	Remove 112; combine Captains Bay into Dutch Harbor/ Unalaska.	119	DUT
Chinitna Bay	114	none	Remove 114	none	none
Douglas	118	none	remove 118; combine into Juneau	136	JNU
Edmonds (Washington)	703	none	Remove 703	none	none
Edna Bay	121	none	Remove 121	none	none
Fort Bragg(California)	501	none	Remove 501	none	none
Fox Island (Washington)	706	none	Remove 706	none	none
Hollis	131	none	Remove 131	none	none
Hooper Bay	188	none	Remove 188	none	none
Ikatan Bay	135	none	Remove 135	none	none
Ilwaco (Washington)	707	none	Remove 707	none	none
Kenai River	140	none	Remove 140; combine Kenai River into Kenai.	139	KEN
Lincoln City (Oregon)	602	none	Remove 602	none	none
Mercer Island (Washington)	709	none	Remove 709	none	none
Nagai Island (Washington)	710	none	Remove 710	none	none
Point Baker	157	none	Remove 157	none	none
Port Angeles (Washington)	711	none	Remove 711	none	none
Port Edward (CANADA)	800	none	Remove 800; combine Port Edward into Prince Rupert.	802	PRU
Port Hardy (CANADA)	801	none	Remove 801	none	none
Port Orchard (Washington)	712	none	Remove 712	none	none
Port Townsend (Washington)	713	none	Remove 713	none	none
Portage Bay	162	none	Remove 162	none	none
Rainier (Washington)	714	none	Remove 714	none	none
Resurrection Bay	163	none	Remove 163	none	none
St. Lawrence	171	none	Remove 171	none	none
Tee Harbor	173	none	Remove 173; combinr into Juneau	136	JNU
Thorne Bay	175	none	Remove 175	none	none
Ugadaga Bay	179	none	Remove 179	none	none

Existing Port Information			Proposed Port Information		
Port Name	OLD Numerical Code	OLD Alpha Code	Action	NEW Numerical Code	NEW Alpha Code
Vancouver (CANADA)	803	none	Remove 803	none	none
West Anchor Cove	182	none	Remove 182	none	none

The need, justification, and economic impacts for the actions in this proposed rule, as well as impacts of the alternatives considered, were analyzed in the RIR prepared for this action (see **ADDRESSES**). A summary appears below.

Prior notice of landing. The objective of the PNOL is to provide the International Pacific Halibut Commission (IPHC) monitoring personnel and NOAA Fisheries Office for Law Enforcement (OLE) personnel advance notice of vessel IFQ landings. Prior to making an IFQ landing, the operator of any vessel intending to make a landing of IFQ halibut, CDQ halibut, or IFQ sablefish must submit a PNOL to OLE. The PNOL allows OLE time to scan the IFQ database to verify the vessel and quota share (QS) information and to schedule monitoring personnel to observe the offload. The PNOL is submitted to OLE, Juneau, AK by toll-free telephone or the marine operator, unless an administrative waiver is granted by a clearing officer. Regulations at 50 CFR part 679 authorize exemptions from submittal of the PNOL for fishermen landing less than 500 lb of halibut incidentally with legal landings of lingcod harvested with dinglebar gear or legal landings of salmon. A landing completed without a PNOL would be investigated by OLE. An estimated 1,042 catcher vessels annually submit a PNOL resulting in an estimated annual total personnel cost of $52,100. The proposed action does not increase or decrease these costs because only the codes are changing, not the procedure.

The IFQ cardholder must initiate a landing report of IFQ sablefish or IFQ halibut and a CDQ halibut cardholder must submit a landing report of CDQ halibut landed upon arrival at the dock. An estimated 1,042 catcher vessels annually submit an IFQ landing report resulting in an estimated annual total personnel cost of $117,225 and estimated annual total miscellaneous cost of $93,780. The proposed action does not increase or decrease these costs because only the codes are changing, not the procedure.

Classification

At this time, NMFS has not determined whether the amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would have no effect on any small entities because there is no effect on fishing activity. It does not impose any financial obligations on small entities. As a result, an initial regulatory flexibility analysis was not prepared. Vessel operators would be required to use the new, consolidated list of port codes when they file PNOL reports. However, the impact of this requirement would be to shorten the list of port codes in Tables 14a and 14b used in landings data collection for the Federal groundfish fisheries in the EEZ off the coast of Alaska and in the IFQ Program and would make it easier to use these tables. This action would not change reporting requirements and would remove unnecessary or potentially conflicting regulations.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Under control number 0648–0272, public reporting burden for the PNOL is estimated to average 12 minutes per response; for the IFQ landing report, estimated 18 minutes per response. Under control number 0648–0401, public reporting burden for the Shoreside Processor Electronic Logbook Report (SPELR) is estimated 30 minutes per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to David__Rostker@omb.eop.gov, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 23, 2004.

Rebecca Lent,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

Table 14 to Part 679 [Amended]

2. Tables 14a and 14b to Part 679 are revised as follows:

BILLING CODE 3510–22–S

Table 14a to Part 679. Port of Landing Codes[1]: Alaska

Port Name	NMFS Code	ADF&G Code
Adak	186	ADA
Akutan	101	AKU
Akutan Bay	102	
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak		ANI
Anvik		ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel		BET
Captains Bay	119	DUT
Chefornak	189	
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/ Unalaska	119	DUT
Egegik	122	EGE
Ekuk		EKU
Elfin Cove	123	ELF
Emmonak		EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks		FBK
Galena		GAL
Glacier Bay		GLB
Glennallen		GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	
Homer	132	HOM
Hoonah	133	HNH
Hydaburg		HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag		KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue		KOT
La Conner		LAC
Mekoryuk	147	
Metlakatla	148	MET
Moser Bay		MOS
Naknek	149	NAK
Nenana		NEN
Nikiski (or Nikishka)	150	NIK

Port Name	NMFS Code	ADF&G Code
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island		NUN
Old Harbor	153	OLD
Other Alaska[1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong		PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions		LIO
Port Moller		MOL
Port Protection	161	
Quinhagak	187	
Sand Point	164	SPT
Savoonga	165	
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna		SOL
St. George	170	STG
St. Mary		STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	
Tununak	178	
Ugashik		UGA
Unalakleet		UNA
Valdez	181	VAL
Wasilla		WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1]To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska which currently has no code assigned, use "499" "Other, AK".

Table 14b to Part 679--Port of Landing Codes: Non-Alaska (California, Oregon, Canada, Washington)

Port Name	NMFS Code	ADF&G Code
CALIFORNIA		
Eureka	500	EUR
Other California[1]	599	
CANADA		
Other Canada[1]	899	
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Olympia		OLY
Other Oregon[1]	699	
Portland		POR
Warrenton	604	
WASHINGTON		
Anacortes	700	ANA
Bellingham	702	
Blaine	717	BLA
Everett	704	
La Conner	708	LAC
Other Washington[1]	799	
Seattle	715	SEA
Tacoma		TAC

[1]To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Vancouver, which currently has no code assigned, use "899" "Other, Canada".

[FR Doc. 04–1938 Filed 1–27–04; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 69, No. 19

Thursday, January 29, 2004

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

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–2004]

Foreign-Trade Zone 234–Gregg County, TX; Application for Foreign-Trade Subzone Status, LeTourneau, Inc. (Loading Equipment, Components of Offshore Drilling Rigs, Log Handling Equipment, Cranes, Drive Systems, and Parts and Components Thereof), Longview, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Gregg County, Texas, grantee of FTZ 234, requesting special-purpose subzone status for the manufacturing facilities (loading equipment, components of offshore drilling rigs, log handling equipment, cranes, drive systems, and parts or components thereof) of LeTourneau, Inc., located in Longview, Texas. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 15, 2004.

The LeTourneau facilities are located at two sites in Longview (305 acres, with up to 68 buildings and 1.27 million sq. ft. of enclosed space): Site # 1 (290.4 acres; 63 buildings with 1,238,032 sq. ft.)—located at 2401 South High Street; and Site # 2 (14.54 acres; 5 buildings with 28,889 sq. ft.)—located at 811 Estes Drive. The facilities (approximately 900 full-time employees and contractors) produce loading equipment, components of offshore drilling rigs, log handling equipment, cranes, drive systems, and parts or components thereof, which LeTourneau intends to manufacture, assemble, test, package, and warehouse under FTZ procedures.

The company's list of categories of imported parts and materials for possible use in manufacturing, assembling, testing, packaging, and warehousing loading equipment, components of offshore drilling rigs, log handling equipment, cranes, drive systems, and parts or components thereof under FTZ procedures includes: Rubber tires; gaskets, washers, and seals (includes rubber bumpers); diesel engines; ball or roller bearings and parts; transmission shafts and cranks (driver, gear box subassembly, driver assembly, internal gear); mechanical seals; machinery parts (exhaust silencer, stacker rear frame, stacker front frame, stacker carriage); static converters (rectifier, master power card); fuses, receptacles, connectors, and plugs; instruments (voltmeter); gears and gearing (spindle); and electric generating sets (generator). Current duty rates for these input materials range up to 9.9 percent.

Zone procedures would exempt LeTourneau from Customs duty payments on foreign components used in export production. On its domestic sales, LeTourneau would be able to defer duty payments, and to choose the lower duty rate that applies to the listed finished-product categories (duty-free to 5.5 percent) for the foreign inputs listed above. LeTourneau would be able to avoid duty on foreign inputs which become scrap/waste, estimated at one percent of imported inputs. The application also indicates that the company will derive savings from simplification and expediting of the company's import and export procedures. Finally, LeTourneau's application states that the company will benefit from an FTZ-related exemption from local property tax. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is March 29, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 13, 2004.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Airport Director's Office, East Texas Regional Airport, Rt. 3, Hwy 322, Longview, TX 75603.

Dated: January 15, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–1934 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–839]

Postponement of Preliminary Countervailing Duty Determination: Carbazole Violet Pigment 23 from India

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination in the countervailing duty investigation of carbazole violet pigment (CVP-23) from India from February 14, 2004 until no later than April 19, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Tariff Act of 1930 (the Act).

EFFECTIVE DATE: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1391 or (202) 482–1394, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination:

On December 11, 2003, the Department initiated the countervailing duty investigation of CVP-23 from India.

See Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 from India, 68 FR 70778 (December 19, 2003). On January 16, 2004, petitioners made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determination in accordance with section 703(c)(1) of the Act. Petitioners requested a postponement in order to ensure sufficient time to receive and analyze submitted responses, and to allow time for the Department to determine the extent to which particular subsidies are being used.

For reasons identified by the petitioners, we see no compelling reason not to postpone the preliminary determination. Therefore, we are postponing and extending the time limit for the preliminary determination in the countervailing duty investigation of CVP-23 from India until no later than April 19, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Act.

This notice of postponement is published pursuant to section 703(c)(2) of the Act.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1935 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 021108269–4015–02]

Climate Variability and Human Health, FY 2004 Joint Announcement

AGENCY: Office of Global Programs (OGP), Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC). (In collaboration with NSF)

ACTION: Notice.

SUMMARY: With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, the National Oceanic Atmospheric Administration (NOAA) and the National Science Foundation (NSF) announce our interest in receiving research proposals to improve understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate the human, biological, and physical pathways by which climate may affect human health, and which explore the potential for applying climate and environmental information toward the goal of improved public health. We are also interested in understanding how the human health impacts and responses, on shorter time scales (*i.e.* seasonal, annual, decadal), affect our knowledge of vulnerability and adaptation to longer-term changes in the climate system.

DATES: Pre-proposals must be received by OGP no later than 5 p.m. eastern time February 27, 2004. Full proposals must be received at the Office of Global Programs no later than 5 p.m. eastern time April 23, 2004.

ADDRESSES: Full Proposals must be submitted to: Office of Global Programs (OGP); National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603. Pre-proposals can be submitted by e-mail to *ogpgrants@noaa.gov.*

GENERAL INFORMATION CONTACT: Diane S. Brown, Grants Manager (*see* **ADDRESSES**), phone at 301–427–2089, ext. 107, fax to 301–427–2222, or e-mail at *ogpgrants@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access: Applicants should read the full text of the full funding opportunity announcement, which can be accessed at OGP's Web site: *http://www.ogp.noaa.gov* or the central NOAA site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.* This announcement will also be available through Grants.gov at: *http://www.Grants.gov.* The standard NOAA application kit is available on the OGP Web site at: *http://www.ogp.noaa.gov/grants/appkit.htm.*

Funding Availability: NOAA and NSF believe that research on the relationship between climate variability and human health will benefit significantly from a strong partnership with outside investigators. An estimated $1 million may be available for FY04. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Funding may be provided by NOAA or NSF. In previous years, three to seven grants have been awarded ranging from $50,000 to $250,000 per year. Past or current grantees funded under this announcement are eligible to apply for a new award which builds on previous activities or areas of research not covered in the previous award. Current grantees should not request supplementary funding for ongoing research through this announcement. Proposals may be for up to a three-year period. It is anticipated that the funding instrument for most of the extramural awards will be a grant, however, in some cases, if NOAA will be substantially involved in the implementation of the project, the funding instrument may be a cooperative agreement.

Statutory Authority: NOAA Authority: 15 U.S.C. 2931 *et seq.;* (CFDA No. 11.431)—Climate and Atmospheric Research. NSF Authority: 42 U.S.C. 1861–75; (CFDA No. 47.050)—Geosciences.

CFDA: No. 11.431, Climate and Atmospheric Research.

Eligibility: Participation in this competition is open to all institutions eligible to receive support from NOAA and NSF. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intragency funds transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: None.

Evaluation and Selection Procedures: NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). The evaluation criteria and selection procedures contained in the June 30, 2003 omnibus notice are applicable to

this solicitation. For a copy of the June 30, 2003 omnibus notice, please go to: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.*

Limitation of Liability: Funding for the program[s] listed in this notice is contingent upon the availability of Fiscal Year 2004 appropriations. NOAA issues this notice subject to the appropriations made available under the current continuing resolution, H.J. Res. 69, ''Making continuing appropriations for the fiscal year 2004, and for other purposes,'' Public Law 108–84, as amended by H.J. Res. 75, Public Law 108–104, H.J. Res. 76, Public Law 108–107, and H.J. Res. 79, Public Law 108–135. NOAA anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond January 31, 2004, the expiration of the current continuing resolution. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2002 (67 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of federal programs.''

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 23, 2004.

Louisa Koch,

Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. 04–1897 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of U.S. Coral Reef Task Force Meeting

AGENCY: Department of Commerce.

ACTION: Notice of public meeting and opportunity for public comment.

Time and Date: Session I—Outreach Workshop and Science Panels: 9 a.m. to 5 p.m., Tuesday, February 24, 2004, EST; Session II—U.S. Coral Reef Task Force Business Meeting: 8:30 a.m. to 5:30 p.m., Wednesday, February 25, 2004, EST.

Place: Main Auditorium, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce announces a public meeting of the U.S. Coral Reef Task Force (CRTF) February 24–25, 2004, in Washington, DC. Through the coordinated efforts of its members, including representatives of twelve federal agencies, the Governors of seven states and territories, and the leaders of the Freely Associated States, the Task Force has helped lead U.S. efforts to address the coral reef crisis and sustainably manage the nation's valuable coral reef ecosystems.

Matters To Be Considered: During the public meeting, the CRTF will report on the implementation of 3-year Local Action Strategies, discuss the status of Task Force resolutions, update action items from the 10th CRTF meeting in the Commonwealth of the Northern Marianas Islands and Guam, and accept public comments. Once finalized, the agenda will be available from the contact below and will also be published on the Web at *http://coralreef.gov/.*

Individuals and organizations can register to attend the meeting at *http://coralreef.gov.* There is also an opportunity to register for both exhibit space and to provide public comments through the contacts below. Wherever possible, those with similar viewpoints or messages are encouraged to make joint statements. Public comments will be received on the afternoon of February 25, 2004. Written public statements may also be submitted to the Task Force prior to, during, or after the meeting. The deadline for submission of written public statements is March 10, 2004. Only written public comments will receive a response from the CRTF.

Travel information and meeting updates are posted on the Web at *http://coralreef.gov.*

FOR FURTHER INFORMATION CONTACT: Organizations and individuals wishing to register for public comments, submit written statements or to obtain additional information should contact the CRTF meeting office:

Shane Guan, Coral Reef Conservation Program, National Oceanic and Atmospheric Administration (NOAA), Office of Response and Restoration, N/ORR, 1305 East West Hwy, Silver Spring, MD 20910, Phone (301) 713–2989 x118, Fax (301) 713–4389, E-mail: *Shane.Guan@noaa.gov.*

Exhibit space reservations can be made by contacting Miguel Lugo at the above address or at *Miguel.Lugo@noaa.gov,* (301) 713–2989 x102.

Dated: January 23, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–1903 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010604B]

Marine Mammals; File No. 116–1729

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821, has applied in due form for a permit to import one beluga whale (*Delphinapterus leucas*) and one Commerson's dolphin (*Cephalorhynchus commersonii*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before March 1, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, (562/980–4021).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Jill Lewandowski, (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import one male, adult beluga whale (*Delphinapterus leucas*) and one male, adult Commerson's dolphin (*Cephalorhynchus commersonii*) from the Duisburg Zoo, Germany to Sea World of California in San Diego, California. The applicant requests this import for the purpose of public display. The receiving facility, Sea World of California, 1720 South Shores Road, San Diego, California 92109 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the AZA and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 93–C–069, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 23, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–1937 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

January 26, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Group I is being increased for special shift, decreasing the limit for Group III to account for the special shift being applied to Group I.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date. Also see 68 FR 59927, published on October 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 2004.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on February 2, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	226,731,409 square meters equivalent.
Group III	
Sublevel in Group III	
845	360,273 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–1933 Filed 1–28–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for Proposed Future Permit Actions Under Section 404 of the Clean Water Act for the Newhall Ranch Specific Plan and Associated Facilities Along Portions of the Santa Clara River and its Side Drainages, in Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The project proponent and landowner, The Newhall Land and Farming Company, has requested a long-term section 404 permit from the Corps of Engineers for facilities associated with the Newhall Ranch Specific Plan. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, the Corps of Engineers intends to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the potential effects of the proposed action on the environment. To eliminate duplication of paperwork, the Corps of Engineers intends to coordinate the DEIS with the Draft Environmental Impact Report (DEIR) being prepared by the California Department of Fish and Game. The joint document will meet the requirements of NEPA as well as enable the Corps to analyze the project pursuant to the 404(b)(1) Guidelines and assess potential impacts on various public interest factors.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS/EIR can be answered by Dr. Aaron O. Allen, Corps Project Manager, at (805) 585–2148. Comments shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office, ATTN: File Number 2003–01264–AOA, 2151 Alessandro Drive, Suite 110, Ventura, CA 93001. Alternatively, comments can be e-mailed to: *Aaron.O.Allen@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The Newhall Ranch Project is located in northern Los Angeles County and encompasses approximately 12,000 acres. The Santa Clara River and State Route 126 traverse the northern portion of the Specific Plan area. The river extends approximately 5.5 miles east to west across the site. On March 27, 2003, the Los Angeles County Board of Supervisors approved the Specific Plan, which establishes the general plan and zoning designations necessary to develop the site with residential, commercial, and mixed uses over the next 20 to 30 years. The Newhall Ranch Specific Plan also includes a Water Reclamation Plant at the western edge of the project area. Individual projects, such as residential, commercial, and industrial developments, roadways, and other public facilities would be developed over time in accordance with the development boundaries and guidelines in the approved Specific Plan. Many of these developments would require work in and adjacent to the Santa Clara River and its side drainages (''waters of the United States'').

The Newhall Land and Farming Company would develop most of the above facilities. However, other entities could construct some of these facilities using the approvals or set of approvals issued to The Newhall Land and Farming Company. The proposed Section 404 permit would also include routine maintenance activities to be carried out by Los Angeles County Department of Public Works using the Section 404 permit issued to The Newhall Land and Farming Company. Any party utilizing a Section 404 permit issued to The Newhall Land and Farming Company would be bound by the same conditions in the Section 404 permit.

2. *Proposed Action.* Newhall Land has identified various activities associated with the Newhall Ranch Project that would require Corps permitting. Many of the proposed activities would require a 404 permit because the activities would affect the riverbed or banks within the jurisdictional limits of the Corps in San Martinez Grande, Chiquito, Potrero, and Long canyons, and smaller drainages with peak flows of less than 2,000 cubic feet per second, as well as the Santa Clara River. These activities are listed and described in further detail below:

- Bank protection to protect land development projects along water courses (including buried soil cement, buried gunite, grouted riprap, ungrouted riprap, and gunite lining);
- Drainage facilities such as storm drains or outlets and partially lined open channels;
- Grade control structures;
- Bridges and drainage crossings;
- Utility crossings;
- Trails;
- Building pads;

• Activities associated with construction of a Water Reclamation Plant (WRP) adjacent to the Santa Clara River and required bank protection;

• Water quality control facilities (sedimentation control, flood debris, and water quality basins);

• Ongoing maintenance activities by the LACDPW; and

• Temporary haul routes for grading equipment.

3. *Scope of Analysis.* The DEIS will be a project-level document which addresses a number of interrelated actions over a specific geographic area that (1) would occur as logical parts in the chain of contemplated actions, and (2) would be implemented under the same authorizing statutory or regulatory authorities. The information in the DEIS will be sufficient for the Corps to make a decision regarding the issuance of a long-term Section 404 permit for the Newhall Ranch Specific Plan.

The document will be a joint Federal and state document. The California Department of Fish and Game (CDFG) will prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the same project regarding a state streambed alteration agreement and state endangered species permit. The Corps and CDFG will work cooperatively to prepare a joint DEIS/DEIR document, and to coordinate the public noticing and hearing processes under Federal and state laws.

The impact analysis will follow the directives in 33 CFR part 325 which requires that it be limited to the impacts of the specific activities requiring a 404 permit and only those portions of the project outside of ''waters of the United States'' over which the Corps has sufficient control and responsibility to warrant Federal review. The Corps will extend the geographic scope of the environmental analysis beyond the boundaries of ''waters of the United States'' in certain areas to address indirect and cumulative impacts of the regulated activities, and to address connected actions pursuant to NEPA guidelines (40 CFR part 1508). In these upland areas, the Corps will evaluate impacts to the environment and identify feasible and reasonable mitigation measures and the appropriate state or local agencies with authority to implement these measures if they are outside the authority of the Corps. In evaluating impacts to areas and resources outside the Corps' jurisdiction, the Corps will consider the information and conclusions from the Final Program EIR for the Specific Plan prepared by Los Angeles County Department of Regional Planning. However, the Corps will exercise its independent expertise and judgment in addressing indirect and cumulative impacts to upland areas due to issuance of the proposed Section 404 permit.

4. *Issues.* There are several potential environmental issues that will be addressed in the DEIS/DEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Surface Water Hydrology, Erosion and Sedimentation;

(b) Groundwater;

(c) Water Quality;

(d) Biological Resources;

(e) Land Use;

(f) Cultural and Paleontological Resources;

(g) Air Quality;

(h) Noise;

(i) Traffic;

(j) Visual Resources;

(k) Parks, Recreation and Trails.

5. *Alternatives.* Alternatives initially being considered for the proposed improvement project include the following:

(a) Alternate locations and configurations of various proposed facilities such as buried bank stabilization, bridges, and grade control structures, along each of the major side drainages including Chiquito Canyon, Potrero Canyon, San Martinez Grande, and Long Canyon, as well as the Santa Clara River;

(b) No Federal action (no construction of facilities within ''Waters of the U.S.'');

(c) No Project (no physical changes).

6. *Scoping Process.* A public scoping meeting to receive input on the scope of the DEIS will be conducted on February 19, 2004 at 6:30 p.m. at Castaic Middle School, located at 28900 Hillcrest Parkway in Castaic, California. Participation in the scoping meeting by Federal, state, and local agencies, and other interested private citizens and organizations are encouraged.

7. *Availability of the Draft EIS/EIR.* The joint lead agencies expect the Draft EIS/EIR to be made available to the public in the summer of 2004. A public hearing will be held during the public comment period for the Draft EIS/EIR.

Dated: January 7, 2004.

John V. Guenther,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. 04–1671 Filed 1–28–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 23, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Annual Performance Reports for FIPSE International Consortia Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 85.

Burden Hours: 20.

Abstract: The renewal of FIPSE's annual performance report for the three international programs is necessary to ensure that the information and data collected results in a balanced and effective assessment of the student exchanges and curricular developments of the EC–US Program, the North American Program, and the US–Brazil Program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2442. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–1898 Filed 1–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 9, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 29, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 26, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Pell Grant reporting under the Common Origination and Disbursement (COD) system.

Abstract: The Federal Pell Grant Program is a student financial assistance program authorized under the Higher Education Act of 1965 (HEA), as amended. This program provides grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award (based on a formula established in statute) and disburses program funds to the student on behalf of the Department (ED). To account for the funds disbursed, institutions report student payment information to ED electronically. Electronic reporting was formerly done through the Recipient Financial Management System (RFMS), but is now done through the Common Origination and Disbursement (COD) system. COD is a simplified process for requesting, reporting, and reconciling Pell Grant funds.

SUPPLEMENTARY INFORMATION: An emergency request for clearance has been requested for approval by February 9, 2004. Collection activity for this collection is ongoing. Approval is requested to ensure that program funding could be disbursed to students.

Frequency: On Occasion; Monthly.

Affected Public: Not-for-profit institutions (primary), Businesses or other for-profit, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,000,000.

Burden Hours: 350,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2446. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should

be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–1928 Filed 1–28–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–55–000, et al.]

American Transmission Company LLC, et al.; Electric Rate and Corporate Filings

January 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Company LLC

[Docket No. EC04–55–000]

Take notice that on January 20, 2004, American Transmission Company LLC (ATCLLC) tendered for filing an application under section 203 of the Federal Power Act for authority to acquire transmission facilities from Upper Peninsula Public Power Agency.

Comment Date: February 10, 2004.

2. FPL Energy Marcus Hook, L.P. Complainant v. PJM Interconnection, L.L.C. Respondent

[Docket No. EL04–57–000]

Take notice that on January 20, 2004, FPL Energy Marcus Hook, L.P. (FPLE Marcus Hook) filed a Complaint against PJM Interconnection, L.L.C. (PJM) regarding charges for interconnection under an Interconnection Service Agreement dated January 20, 2002.

FPLE Marcus Hook states that a copy of the Complaint was served upon PJM and upon Conectiv.

Comment Date: February 9,2004.

3. MxEnergy Inc.

[Docket No. ER02–737–001]

Take notice that on January 15, 2004, MxEnergy Inc. tendered for filing a Notice of Withdrawal of a compliance filing made on December 17, 2003 in Docket No. ER02–737–001.

Comment Date: January 30, 2004.

4. UAE Mecklenburg Cogeneration LP

[Docket No. ER02–1902–001]

Take notice that on December 17, 2003, UAE Mecklenburg Cogeneration LP, submitted a compliance filing in response to the Commission's November 17, 2003 Order Amending Market-based Rate Tariffs and Authorizations, in Docket Nos. EL01–118–000 and 001.

Comment Date: January 30, 2004.

5. Nevada Power Company

[Docket No. ER02–1913–004]

Take notice that on January 15, 2004, Nevada Power Company (Nevada Power) submitted a compliance filing pursuant to the Commission's Order issued in Docket Nos. ER02–1913–002 and 003 making the required change to the Interconnection and Operation Agreement between Nevada Power and GenWest, LLC.

Comment Date: February 5, 2004.

6. Public Service Company of Colorado

[Docket No. ER03–971–002]

Take notice that on January 5, 2004, Public Service Company of Colorado submitted for filing signed copies of Appendices A and D to the Settlement Agreement between Public Service Company and Yampa Valley Electric Association Inc filed on December 30, 2003.

Comment Date: February 2, 2004.

7. AmerenEnergy Resources Generating Company

[Docket No. ER04–53–003]

Take notice that on January 15, 2004, AmerenEnergy Resources Generating Company (AERG) submitted for filing a supplement to its Notice of Succession previously filed in Docket No. ER04–53 on October 17, 2003.

Comment Date: February 5, 2004.

8. Forest Energy Partners, LLC

[Docket No. ER04–197–001]

Take notice that on January 5, 2004, Forest Energy Partners LLC, submitted for filing a revised Rate Schedule FERC No. 1 and Petition for Order Accepting Market-based Rate Schedule, and granting waivers and blanket approvals.

Comment Date: February 2, 2004.

9. California Independent System Operator Corporation

[Docket No. ER04–370–001]

Take notice that on January 5, 2004, the California Independent System Operator Corporation (ISO) submitted revisions to the informational filing made on December 31, 2003 to the updated Transmission Access Charge Rates effective January 1, 2004.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff and in addition, the ISO is posting the filing on the ISO Home Page.

Comment Date: February 2, 2004.

10. NRG Northern Ohio Generating LLC

[Docket No. ER04–406–000]

Take notice that on January 14, 2004, NRG Northern Ohio Generating LLC (NRG Northern Ohio) submitted pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a notice canceling NRG Northern Ohio's FERC Rate Schedule No. 1 and Service Agreement No. 1 thereunder. NRG Northern Ohio requests that the cancellation be made effective January 14, 2004.

Comment Date: February 4, 2004.

11. Wisconsin Electric Power Company

[Docket No. ER04– 407–000]

Take notice that on January 15, 2004, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing the inputs to the formula rates in Exhibit No. 4 of two Generation-Transmission Must Run Agreements with American Transmission Company, LLC (ATLLLC). Wisconsin Electric states that the inputs are reflected in an updated Exhibit No. 4.4 for Wisconsin Electric's Oak Creek Power Plant and Presque Isle and Upper Peninsula of Michigan Hydroelectric Plants. Wisconsin Electric further states that by the terms of the Must Run Agreements, the inputs to the formula rate tendered for filing herein took effect on January 1, 2004. As such, Wisconsin Electric requests that the updates to Exhibit Nos. 4.4 of the Must Run Agreements be made effective on January 1, 2004.

Wisconsin Electric states that copies of this filing have been provided to ATCLLC, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment Date: February 5, 2004.

12. MDU Resources Group, Inc.

[Docket No. ES04–11–000]

Take notice that on January 16, 2004, the MDU Resources Group, Inc. (MDU) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization for the issuance of an additional 1.5 million shares of MDU's common stock to be issued from time to time in connection with MDU's 1998 Option Award Program.

MDU also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 5, 2004.

13, Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ES04–12–000]

Take notice that on January 16, 2004, the Idaho County Light & Power Cooperative Association, Inc. (Idaho County) submitted an application pursuant to Section 204 of the Federal Power Act to renew authorization to make long-term borrowing in an amount not to exceed $1.5 million under a loan agreement with the National Rural Utilities Cooperative Finance Corporation.

Idaho County also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 12, 2004.

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, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–142 Filed 1–28–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–51–000, et al.]

Westar Energy, Inc., et al.; Electric Rate and Corporate Filings

January 21, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Energy, Inc. and Kaw Valley Electric Cooperative, Inc.

[Docket No. EC04–51–000]

Take notice that on January 13, 2004, Westar Energy, Inc. (Westar Energy) and Kaw Valley Electric Cooperative, Inc. (Kaw Valley), filed an application with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and Part 33 of the Commission regulations, 18 CFR part 33. Westar Energy requests authorization and approval of the sale by Westar Energy of certain jurisdictional transmission assets located in the State of Kansas to Kaw Valley.

Comment Date: February 3, 2004.

2. Frederickson Power L.P. and Puget Sound Energy, Inc.

[Docket No. EC04–53–000]

Take notice that on January 14, 2004, Frederickson Power L.P. (Frederickson) and Puget Sound Energy, Inc. (PSE) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act (the FPA), 16 U.S.C. 824b, and Part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a disposition of jurisdiction facilities relating to the sale of a 249 MW generating facility by Frederickson to PSE. The Applicants request confidential treatment of certain portions of the Purchase and Sale Agreement relating to the proposed transaction, and have provided redacted versions that omit privileged information.

Comment Date: February 4, 2004.

3. California Independent System Operator Corporation

[Docket No. ER02–1656–018]

Take notice that on January 16, 2004, the California Independent System Operator Corporation (CAISO) tendered for filing its Response to a letter request from Jamie Simler, Director, Division of Tariffs and Market Development—West, issued on December 16, 2003 in the captioned proceeding.

The CAISO states that copies of this filing were served upon all parties designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: January 30, 2004.

4. San Diego Gas & Electric Company

[Docket No. ER03–601–002]

Take notice that on January 13, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing its redesignated Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 11 and the first revised rate sheets for its TO Tariff. SDG&E states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order rendered in Docket No. ER03–601 on December 18, 2003.

SDG&E states that copies of this filing were served upon the Service List complied by the Secretary in this docket.

Comment Date: February 3, 2004.

5. Pacific Gas and Electric Company

[Docket No. ER04–400–000]

Take notice that on January 14, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreement (GSFA), and Generator Interconnection Agreement (GIA) between PG&E and Mirant Delta, LLC (Mirant), El Dorado Irrigation District (El Dorado), and Midway Sunset Cogeneration Company (Midway Sunset) (collectively, Parties), and Notice of Termination of PG&E Service Agreement No. 51, under FERC Electric Tariff, Sixth Revised Volume No. 5.

PG&E states that copies of this filing have been served upon Mirant, El Dorado, Midway Sunset, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: February 4, 2004.

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, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–143 Filed 1–28–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: *Tuesday, February 3, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: *Thursday, February 5, 2004, 2: p.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–37: Americans for a Better Country by Keith A. Davis, Treasurer.

Draft Advisory Opinion 2003–38: United States Representative Eliot Engel by counsel, Cassandra Lentchner.

Draft Advisory Opinion 2003–39: Credit Union National Association by counsel, Jan Witold Baran and D. Mark Renaud.

Draft Advisory Opinion 2003–40: U.S. Navy Veterans' Good Government Fund by Bill Meyers, Treasurer.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Robert W. Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–1964 Filed 1–27–04; 12:25 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

A De Novo Corporation To Do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Borad's approval of the organization of a corporation to do business under section 25A of the Federal AReserve Act (Edge Corporation) 12 U.S.C. § 611 et seq. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.5).

The application may be inspected at the Federal Reserve Bank of San Francisco or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application my be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than February 23, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Zions First National Bank*, Salt Lake City, Utah; to establish Zions Bank International, Las Vegas, Nevada, as an Edge Corporation, and a wholly owned subsidiary, Van der Moolen UK Limited, pursuant to section 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, January 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1894 Filed 1–28–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 12, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Steven D. Dehnert, Lake Mills, Wisconsin; Cheryl A. Dobson, Fort Atkinson, Wisconsin, and Steven R. Hein, Edgerton, Wisconsin, as trustees; to acquire voting shares of Citizens Financial Corporation Employee Stock Ownership Plan and Trust, Fort Atkinson, Wisconsin, and thereby indirectly acquire voting shares of Citizens State Bank and Trust, Fort Atkinson, Wisconsin.

Board of Governors of the Federal Reserve System, January 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1892 Filed 1–28–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. NRBC Holding Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The National Republic Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1893 Filed 1–28–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Electronic Disease Surveillance System (NEDSS)—New—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

Background

CDC is responsible for the collection and dissemination of nationally notifiable diseases' information and for monitoring and reporting the impact of epidemic influenza on mortality, Public Health Services Act (42 U.S.C. 241). In April 1984, CDC Epidemiology Program Office (EPO) in cooperation with Cities, State and Territorial Epidemiologists (CSTE) and epidemiologists in six states began a pilot project, the Epidemiologic Surveillance Project (ESP), designed to demonstrate the efficiency and effectiveness of computer transmission of surveillance data between CDC and the state health departments. Each state health department used its existing computerized disease surveillance system to transmit specific data concerning each case of a notifiable disease, and CDC technicians developed computer software to automate the transfer of data from the state to CDC.

In June 1985, CSTE passed a resolution supporting ESP as a workable system for electronic transmission of notifiable disease case reports from the states/territories to CDC, and as the program was extended beyond the original group of states, EPO began to provide software, training and technical support to state health department staff overseeing the transition from hard-copy to automated transmission of surveillance data.

By 1989, all 50 states were using this computerized disease surveillance system, which was then renamed the National Electronic Telecommunications System for Surveillance (NETSS) to reflect its national scope. Core surveillance data are transmitted to CDC by the states and territories through NETSS. NETSS has a standard record format for data transmitted and does not require the use of a specific software program. The ability of NETSS to accept records generated by different software programs is what made it useful for the efficient integration of surveillance systems nationwide.

Since 1999, CDC, Epidemiology Program Office (EPO) has worked with CSTE, state and local public health system staff, and other CDC disease prevention and control program staff to identify information and information technology standards to support integrated disease surveillance. That effort is now focused on development of the National Electronic Disease Surveillance System (NEDSS), coordinated by CDC's Deputy Director for Integrated Health Information Systems.

NEDSS will electronically integrate and link together a wide variety of surveillance activities and will facilitate more accurate and timely reporting of disease information to CDC and state and local health departments. Consistent with recommendations supported by our state and local surveillance partners and described in the 1995 report, *Integrating Public Health Information and Surveillance Systems,* NEDSS will include data standards, an internet based communications infrastructure built on industry standards, and policy-level agreements on data access, sharing, burden reduction, and protection of confidentiality. To support NEDSS, CDC is supporting the development of an information system, the NEDSS Base System (NBS), which will use NEDSS technical and information standards, (*http://www.cdc.gov/od/hissb/doc/NEDSSBaseSysDescription.pdf*). We are requesting a three-year clearance of the NBS data that is not currently covered by an existing clearance. There are currently no costs to respondents because their costs will be covered by a grant from the CDC. However, there may be future costs associated with their participation in the NBS.

Respondents	Activity	No. of respondents	No. of responses/ respondent	Average burden/response (in hrs)	Total burden hours
State Health Departments	Typing and gathering of the data	16	10,000	2/60	5,333
	Transmission of the data	16	52	1	832
Total					6,165

Dated: January 22, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–1843 Filed 1–28–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Notice

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a request for information only. It is not a request for proposal and does not commit the government to issue a solicitation, make an award, or pay any costs associated with responding to this announcement. All submitted information shall remain with the government and will not be returned.

The Centers for Disease Control and Prevention (CDC), National Center for Infectious Disease (NCID), Division of Bacterial and Mycotic Diseases (DBMD) through its component Branches has lead technical responsibility for a number of Category A, B and C bioterrorism agents and their associated toxins (*Bacillus anthracis, Clostridium botulinum, Brucella sps., Burkholderia sps., Staphylococcus* entertoxin B, other food- or waterborne bacterial pathogens, and other bacterial agents). DBMD uses epidemiologic, laboratory, clinical, and biostatistical sciences to control and prevent bacterial and mycotic infectious disease. The Division also conducts applied research in a variety of settings, and translates the findings of this research into public health practice.

DBMD is seeking to evaluate commercial products, or products in development, for *in vitro* comparison of immunotherapeutic and immunoprophylactic antibody treatments for anthrax. Specifically these may include monoclonal and polyclonal antibody toxin inhibitors and inhibitors of intracellular anthrax toxin function. CDC will coordinate the evaluation of products in a range of *in vitro* and *in vivo* models. Data obtained from this comparative analysis will be used by CDC and DHHS in making recommendations and decisions on development of an appropriate procurement strategy to meet the nation's bioterrorism defense needs.

Interested organizations that have candidate products are invited to submit documentation for CDC to assess whether the offered product(s) are at a sufficient stage of development to be included in this comparative analysis. As a minimum, submitted information should be sufficient for CDC to assess the following for each candidate product:

a. Pre-clinical animal efficacy studies.

b. Pre-clinical pharmacokinetic studies.

c. Biochemical analysis to include:

Binding affinity measurements for monoclonal antibodies.

Animal species (if applicable).

Epitope or domain binding targets (if available).

Mass value assignment for antigen-specific antibody levels (*e.g.* Anti-PA specific IgG concentration).

Organizations that have products selected by CDC for this comparative analysis will be required to submit data packages with as much detail as possible for the pre-clinical studies, and to enter into an appropriate agreement prior to the transfer of any material to CDC.

Sample agreements may be viewed at the following Web site: *http://www.cdc.gov/od/ads/techtran/forms.htm.* All information submitted to CDC will be kept confidential as allowed by relevant federal law, including the Freedom of Information Act (5 U.S.C. 552), and the Trade Secrets Act (18 U.S.C. 1905). Only information submitted by February 1, 2004, will be reviewed to determine if the offered product(s) will be acceptable for possible inclusion in this comparative analysis.

Responses are preferred in electronic format and can be e-mailed to the attention of Michael J. Detmer at *MDetmer@cdc.gov.* Mailed responses can be sent to the following address: Michael J. Detmer, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE., Mail Stop C–09, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: *Technical:* Dr. Conrad Quinn, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mail Stop D–11, Atlanta, GA 30333. Telephone (404) 639–2858, e-mail at *cquinn@cdc.gov.*

Business: Lisa Blake-DiSpigna, Technology Development Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mail Stop E–51, Atlanta, GA 30333. Telephone (404) 498–3262, e-mail at *lblake-dispigna@cdc.gov.*

Dated: January 22, 2004.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 04–1906 Filed 1–28–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 62456–62459, dated November 4, 2003) is amended to reorganize the Management Analysis and Services Office, Office of the Chief Operating Officer.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Management Analysis and Services*

Office (CAJ6), Office of the Chief Operating Officer (CAJ), by deleting item (1) and inserting the following: (1) Plans, coordinates, and provides CDC-wide management and information services in the following areas: policy development and consultation, studies and surveys, delegations of authorities, organizations and functions, Privacy Act, confidentiality management, records management, Paperwork Reduction Act and OMB clearance, printing procurement and reproduction, and meeting management, forms design and management, publications distribution, mail services, public inquires, information quality, and Federal advisory committee management.

Delete the functional statement for the *Office of the Director (CAJ61)* and insert the following:

Plans, directs, coordinates, and implements activities of the Management Analysis and Services Office (MASO). (1) Plans, directs, and coordinates requirements of OMB Circulars to conduct competitive sourcing activities, management review and FAIR Act activities and to determine whether certain Agency functions might be more appropriately carried out through or by commercial sources; (2) plans, develops, and implements policies and procedures in these areas, as appropriate; (3) provides forms management services, including development, coordination of clearances, and inventory management.

Delete in their entirety the title and functional statement for the *Committee Management and Program Panels Activity (CAJ62)*.

Delete in their entirety the title and functional statement for the *Management Procedures Branch (CAJ63)*.

Delete the title and functional statement for the *Management Analysis Branch (CAJ64)*, and insert the following:

Management Analysis and Policy Branch (CAJ64). (1) Provides management and oversight of CDC Federal advisory committees including the CDC-wide special emphasis panel that is the primary review mechanism for assuring scientific and programmatic review of applications and cooperative agreements for grant support and contracts; (2) provides consultation and assistance to CDC program officials on the establishment, modification, or abolishment of organizational structures and functions; reviews and analyzes organizational changes; and develops documents for approval by appropriate CDC or HHS officials; (3) coordinates IG/GAO audit activities; (4) conducts management and operational studies for CDC to improve the effectiveness and efficiency of management and administrative systems techniques, policies, and organizational structures; (5) interprets, analyzes, and makes recommendations concerning delegations and redelegations of program and administrative authorities, and develops appropriate delegating documents; (6) manages the CDC policy issuance system to include policy development, dissemination, and advisory services; interprets HHS and other directives and assesses their impact on CDC policy, and maintains the official CDC library of administrative management policy and procedures manuals; (7) directs the agency-wide confidentiality management function to process applications for approval to collect sensitive research data in accordance with special confidentiality authorities in Sections 301(d) and 308(d) of the Public Health Service Act; (8) provides consultation and assistance to CDC program officials and staff in complying with the requirements of the Privacy Act, the Paperwork Reduction Act and OMB clearance, and accompanying guidelines and regulations; (9) plans, develops, and implements policies and procedures in these areas, as appropriate; (10) conducts a CDC-wide records management program, including provision of technical assistance in the development and conduct of electronic records management activities.

Delete the title and functional statement for the *Management Services Branch (CAJ65)* and insert the following:

Management and Information Services Branch (CAJ65). (1) Plans and conducts a publications management program, including development, production, procurement, distribution, and storage of CDC publications; (2) plans, directs, coordinates, and implements CDC-wide information distribution services and mail and messenger services, including the establishment and maintenance of mailing lists and OPS Announcements; (3) maintains liaison with contract suppliers, HHS, the Government Printing Office, and other Government agencies on matters pertaining to printing, copy preparation, reproduction, and procurement of printing; (4) manages all functions of the auditoriums at the Roybal Campus and specific meeting rooms at Roybal and other CDC campuses provides conference management support and audio-visual expertise to CIO customers; plans, develops, and implements policies and procedures in these areas, as appropriate; (5) serves as the focal point for recommending policies and establishing procedures for matters pertaining to energy conservation of white office paper recycling; (6) receives and reviews requests received from the public or information and publications; and responds to the requests or triages them to the appropriate organization (CDC or other agencies) for action; (7) manages the CDC-wide subject matter database which serves as a resource for CIOs, call management services and hotlines within CDC; (8) manages the current food service facilities at the Roybal and Chamblee Campuses as well as future planned food service facilities; (9) responsible for the planning, coordination and management of the Conference Center located in the Scientific Communication Center on the Roybal Campus; manages the infrastructure support for functions within the Scientific Communication Center provided by a contractor; (10) manages the receipt and response to complaints by the public questioning the accuracy of any scientific information disseminated by CDC; implements established government guidelines contained in Public Law 106–554, Section 515, for ensuring the Quality of Information disseminated to the public by Government Agencies.

Dated: January 22, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–1905 Filed 1–28–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0026]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing; Form FDA 3356

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for establishment registration and listing for human cells, tissues, and cellular and tissue-based products (HCT/Ps) and the associated Form FDA 3356 used to report establishment registration and listing information.

DATES: Submit written or electronic comments on the collection of information by March 29, 2004.

ADDRESSES: Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing; Form FDA 3356—21 CFR 1271 (OMB Control Number 0910–0469)—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or from foreign countries into the States. As derivatives of the human body, all HCT/Ps pose some risk of carrying pathogens that could potentially infect recipients or handlers. The regulations in part 1271 (21 CFR part 1271) require domestic and foreign establishments that recover, process, store, label, package, or distribute any HCT/P, or that perform screening or testing of the cell or tissue donor to register with FDA (§ 1271.10(b)(1)) and submit a list of each HCT/P manufactured (§ 1271.10(b)(2)). Section 1271.21(a) requires the initial establishment registration, and section 1271.25(a) and (b) identify the required initial registration and HCT/P listing information. Section 1271.21(b) requires an annual update of the establishment registration. Section 1271.21(c)(ii) requires establishments to submit HCT/P listing updates when an HCT/P is changed as described in section 1271.25(c). Section 1271.25(c) identifies the required HCT/P listing update information. Section 1271.26 requires establishments to submit an amendment if ownership or location of the establishment changes.

FDA requires the use of a registration and listing form (Form FDA 3356; Establishment Registration and Listing for Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); *http://forms.psc.gov/forms/FDA/fda.html*) (§§ 1271.22 and 1271.25) to submit the required information. To further facilitate the ease and speed of submissions, electronic submission is accepted (*http://www.fda.gov/cber/tissue/tisreg.htm*).

Sections 207.20, 207.26, 207.30 (approved under OMB control number 0910–0045), and 807.22(a) and (b) (approved under OMB control number 0910–0387) (21 CFR 207.20, 207.26, 207.30, and 807.22(a) and (b)) already require establishments that manufacture drugs or devices to submit to FDA initial establishment registration and product listing, as well as annual establishment registration, product listing updates, and location and ownership amendments. Sections 207.20(f) and 807.20(d) require that manufacturers of HCT/P drugs (subject to review under an application submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) or under a biological products license application under section 351 of the PHS Act (42 U.S.C. 262)) and devices (subject to premarket review or notification, or exempt from notification, under an application submitted under the device provisions of the act or under a biological product license application under section 351 of the PHS Act) submit this registration and listing information using Form FDA 3356 instead of the multiple forms identified under parts 207 and 807. Therefore these establishments (FDA estimates a total of 67 (1+66) respondents as shown in table 1 of this document) will incur only a one-time burden to transition from the use of several forms to the use of one form.

Respondents to this information collection are establishments that recover, process, store, label, package or distribute any HCT/P, or perform donor screening or testing. In table 2 of this document, based on information from FDA's database system for the fiscal year (FY) 2003, there are 1,003 establishments that have registered and listed with FDA. This number includes 552 establishments manufacturing conventional or ocular HCT/Ps, which are currently required to register and list with FDA. The remaining 451 establishments are manufacturers of hematopoietic stem cells derived from peripheral or cord blood, and reproductive cells and tissue. Although these establishments currently are not required to register and list, some have registered voluntarily and are therefore included in the burden estimate. Based on information from FDA's database for FY 2002, there were 484 listing updates and 12 location/ownership amendments. When registration and listing requirements are implemented for all HCT/P establishments, i.e., when sections 207.20(f), 807.20(d), and 1271.3(d)(2) are effective, FDA estimates in table 1 of this document that approximately 367 (300+66+1) HCT/P establishments would initially register and list in addition to the 1,003 currently registered establishments.

The burden estimates for the initial registration and listing and average hours per response are based on

institutional experience with comparable reporting provisions for drugs including biological products, and devices, information from industry representatives and trade organizations, and data provided by the Eastern Research Group, a consulting firm hired by FDA to prepare an economic analysis of the potential economic impact on sperm banks and other reproductive tissue facilities.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED INITIAL (ONE-TIME) REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
207.20(f)	Change to Form 3356	1	1	1	0.5	0.5
807.20(d)		66	1	66	0.5	33
1271.10(b)(1) and (b)(2), 1271.21(a), and 1271.25(a) and (b)	Initial registration and listing	300	1	300	0.75	225
Total						258.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1271.10(b)(1) and 1271.21(b)	Annual Registration	1,003	1	1,003	0.5	501.5
1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c)	Listing Update	484	1	484	0.5	242
1271.26	Registration Amendment	12	1	12	0.25	3
Total						746.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1839 Filed 1–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0147]

Determination of Regulatory Review Period for Purposes of Patent Extension; FROVA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FROVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of two patents that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FROVA

(frovatriptan succinate). FROVA is indicated for the acute treatment of migraine attacks with or without aura in adults. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for FROVA (U.S. Patent Nos. 5,464,864 and 5,616,603) from Vernalis, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FROVA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FROVA is 2,201 days. Of this time, 1,186 days occurred during the testing phase of the regulatory review period, while 1,015 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: November 1, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 1, 1995.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 29, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for FROVA (NDA 21–006) was initially submitted on January 29, 1999.

3. *The date the application was approved*: November 8, 2001. FDA has verified the applicant's claim that NDA 21–006 was approved on November 8, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,096 days of patent term extension for patent 5,464,864 and 586 days of patent term extension for patent 5,616,603.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by March 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 27, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–1840 Filed 1–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0245]

Determination of Regulatory Review Period for Purposes of Patent Extension; REMODULIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REMODULIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product REMODULIN (treprostinil sodium). REMODULIN is indicated as a continuous subcutaneous infusion for the treatment of arterial pulmonary hypertension in patients with NYHA class II–IV symptoms to diminish symptoms associated with exercise. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REMODULIN (U.S. Patent No. 5,153,222) from United Therapeutics, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of REMODULIN represented the first permitted commercial marketing or use of the

product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REMODULIN is 4,026 days. Of this time, 3,443 days occurred during the testing phase of the regulatory review period, while 583 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 15, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 15, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 16, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for REMODULIN (NDA 21–272) was initially submitted on October 16, 2000.

3. The date the application was approved: May 21, 2002. FDA has verified the applicant's claim that NDA 21–272 was approved on May 21, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 337 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by March 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 27, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–1841 Filed 1–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Record of Decision—Construction and Operation of an Integrated Research Facility by the National Institutes of Health at Fort Detrick, MD

AGENCY: Department of Health and Human Services, National Institutes of Health (NIH) United States Army Garrison (USAG), Fort Detrick.

ACTION: Notice. The Department of Health and Human Services, NIH, and the United States Army Garrison, Fort Detrick (Cooperating Agency), have decided, after completion of a Final Environmental Impact Statement (EIS) and a thorough consideration of public comments on the Draft EIS, to implement Alternative I (Proposed Action), which was identified as the Preferred Alternative in the Final EIS. This action involves the construction and operation of an Integrated Research Facility (IRF) by NIH on a site adjacent to existing U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID) facilities at Fort Detrick, Maryland.

The National Institute of Allergy and Infectious Diseases (NIAID), a component of NIH, will be the occupant of the facility, which will contain Intramural NIAID bio-safety level –2, –3, and –4 laboratory and animal research facilities for conducting biodefense and emerging infectious disease research. NIAID's biodefense mission is different but complementary to USAMRIID's. The selected action best satisfies NIH's needs and the biodefense research goals of NIAID and USAMRIID. Moreover, it fosters increased interagency collaboration between NIH and U.S. Army scientists by building on the already well established formal cooperation that exists between these two organizations. NIH will incorporate design and operational safeguards in the facility to protect laboratory workers and local residents from possible harmful effects related to the operation of the facility, however remote these occurrences may be. This action also allows NIH to address a critical national shortage in bio-safety level-4 (BSL–4) capability.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Wilson, Master Planner, Division of Facilities Planning, ORF, National Institutes of Health, 31 Center Drive, Room 3B44, MSC 2162, Bethesda, Maryland, 20817–2162, telephone 301–496–5037, e-mail: *wilsoron@ors.od.nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) and United States Army Garrison, Fort Detrick (USAG), have prepared this Record of Decision (ROD) on a Final EIS for the construction and operation of an Integrated Research Facility by NIH at Fort Detrick, Maryland. This ROD includes:

1. The final decision;
2. All alternatives considered, specifying the alternative or alternatives which were considered to be environmentally preferable;
3. A discussion of factors which were involved in the decision, including any essential considerations of national policy which were balanced in making the decision and a statement of how those considerations, if any, entered into the decision;
4. A statement of whether all practicable means to avoid or minimize potential environmental harm from the selected alternative have been adopted, and if not, why they were not;
5. A description of mitigation measures that will be undertaken to make the selected alternative environmentally acceptable;
6. A discussion of the extent to which pollution prevention is included in the decision and how pollution prevention measures will be implemented; and
7. A summary of any monitoring and enforcement program adopted for any mitigation measures.

Alternatives Considered

Two reasonable alternatives were identified and considered in the Final EIS. They are (1) Alternative I, the Proposed Action, and, (2) the No Action Alternative. The Proposed Action is described above. Under the No Action Alternative, NIH would not build the IRF thereby eliminating the negligible to minor adverse impacts associated with implementation of the selected action. Selection of the No Action alternative, however, would prevent NIH and the public from realizing the health and safety benefits that would derive from the research conducted in the planned IRF. This research will focus on disease-causing organisms that might emerge naturally or be used as agents of

bioterrorism as well as developing a better understanding of the pathogenesis of such microbes and the human response to them. The knowledge gained will be used to develop new and improved diagnostic tests, vaccines, and therapies to protect civilians.

Three additional alternatives were identified but rejected as not practical and, therefore, are not evaluated in detail in the Final EIS. These are: (1) Construction and Operation of an IRF by NIH at another location within Area A of Fort Detrick (Alternative III); (2) Construction and Operation of an IRF by NIH within Area B of Fort Detrick (Alternative IV); and (3) Construction and Operation of an IRF by NIH outside Fort Detrick (Alternative V). The rejected alternatives, along with the reasons for their elimination, are described in the Final EIS.

Factors Involved in the Decision

Several factors are involved in NIH's decision to proceed with the Proposed Action as the selected action.

Based on analyses in the Draft and Final EISs, the selected action best satisfies the project's Purpose and Need, which involves expanding NIH's research capability and, in particular, its BSL–4 laboratory capacity, to support research related to developing new and improved diagnostic tests, vaccines, and therapies for biodefense purposes, as well as attaining a better understanding of emerging infectious diseases. In addition, the action is consistent with NIH's mission, which is to serve as the nation's steward for medical and behavioral research. Furthermore, as noted above, it will facilitate greater cooperation between NIH and U.S. Army researchers in the area of biodefense research.

From an environmental perspective, the IRF will result in minor to negligible disruption to the physical and biological environment. In instances where unavoidable adverse environmental effects are anticipated, the potential adverse impacts will be mitigated through compliance with existing regulatory requirements, application of Best Management Practices (BMPs), and adherence to construction contract requirements. The action also is in accord with Fort Detrick's Installation Master Plan and conforms to USAG's planning and environmental policies. Operation of the IRF will not adversely impact City of Frederick residents. Security measures either exist or will be implemented for the project.

In terms of national considerations, Congress clearly intended that the research laboratory be built on Department of the Army land at Fort Detrick. As a result, it appropriated $105 million to construct the research building at Fort Detrick.

Although options to locate the IRF on alternate sites at Fort Detrick were also considered early on in the development of the Final EIS, these were considered less favorable in terms of collaboration by personnel from both agencies since the IRF would be further removed from USAMRIID facilities. In addition, placing the IRF in another portion of Area A or in Area B is not consistent with Fort Detrick land use planning and would be more distant from existing infrastructure support. Alternative V, which involved locating the IRF on a site outside of Fort Detrick, was eliminated from evaluation in the Final EIS during the scoping process since it was determined to be contrary to congressional intent. Furthermore, placing the IRF outside of Fort Detrick could require costly land acquisition and infrastructure development that could delay completion of the IRF by several years.

Practicable Means To Avoid or Minimize Potential Environmental Harm from the Selected Alternative

All practicable means to avoid or minimize adverse environmental effects from the selected action have been identified and incorporated into the action.

Pollution Prevention

In accordance with DHHS General Administration Manual Part 30, Environmental Protection (dated February 25, 2000), pollution prevention will be a major focus of the design, construction, and operation of the IRF. Pollution prevention measures incorporated in the selected action include:

- Reducing construction waste by recycling materials wherever possible;
- Applying BMPs during construction to minimize soil erosion and potential airborne particulate matter;
- Including new state-of-the-art energy efficient equipment in the facility to reduce the energy demand on Fort Detrick electrical systems;
- Rendering all contaminated or potentially contaminated medical waste noninfectious by a combination of chemical and physical (autoclaving) methods before disposal or transport off-site;
- Sterilizing laboratory wastewater within the laboratories and, secondarily, within the facility itself through chemical disinfection or steam sterilization methods before discharging wastewater into the Fort Detrick sanitary sewer system;
- Employing High Efficiency Particulate Air filters to capture small particles in laboratory exhaust air before venting the air to the outside; and
- Requiring that IRF activities comply with the NIH waste management policies, which emphasize source segregation, inactivation, source reduction, reuse, and recycling.

Mitigation Measures

During the preparation of the Final EIS several potential environmental issues associated with implementation of the Proposed Action were identified. These included land use (land disturbance), construction noise, transportation (traffic and parking), geology (potential sinkholes), water resources (sedimentation, stormwater management, water supply), plant and animal ecology (displacement of deer and/or bird species), air quality (fugitive dust during construction, increased pollutant emissions during operation, and increased vehicular emissions), historic and archaeological resources (potential impacts on National Register eligible properties), and pollution prevention/waste management (construction wastes and handling and disposal of waste generated during operation). These potential adverse impacts were deemed to be negligible to minor, and capable of being mitigated through compliance with existing regulatory requirements, application of BMPs, and adherence to construction contract requirements.

In addition, possible adverse health and safety impacts on laboratory workers in the proposed IRF and on nearby residents during the operational phase of the project were evaluated. The risks were deemed to be negligible to minor, and able to be mitigated through adherence to guidelines outlined in Biosafety in Microbiological and Biomedical Laboratories, a joint publication of the Centers for Disease Control and NIH, as well as other standards for safe operational practices.

Monitoring and Enforcement Program for Mitigation Measures

Since potential adverse impacts would be mitigated by compliance with existing regulatory requirements, application of BMPs, and adherence to construction contract requirements, existing regulatory reporting requirements and contract administration procedures will serve in lieu of a formal Monitoring and Enforcement Program.

Conclusion

Based upon review and careful consideration of the impacts identified

in the Final EIS, results of various environmental and hazard assessment studies conducted in conjunction with the Draft EIS; public comments received throughout the National Environmental Policy Act process, including comments on the Draft EIS and those provided during the required 30-day waiting period for the Final EIS; and other relevant factors, such as congressional intent, NIH and USAG, Fort Detrick, have decided to implement Alternative I, the Proposed Action, construction and operation of the IRF by NIH on a site adjacent to existing USAMRIID facilities at Fort Detrick, Maryland.

Dated: January 21, 2004.

Stephen A. Ficca,

Director, Office of Research Services, National Institutes of Health.

Dated: January 22, 2004.

John E. Ball,

Colonel, MS, Deputy Installation Commander.

[FR Doc. 04–1887 Filed 1–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OMB Control Number 1004–0132; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 10, 2003, the BLM published a notice in the **Federal Register** (68 FR 6758) requesting comment on this information collection. The comment period ended on April 11, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0132), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Geothermal Leasing Reports and Resource Leasing and Drilling Operations (43 CFR 3200 and 3260).

OMB Control Number: 1004–0132.

Bureau Form Number(s): 3260–2, 3260–3, 3260–4, and 3260–5.

Abstract: The Bureau of Land Management (BLM) collects and uses the information from entities interested in the development of geothermal resources on public lands. Also, we collect and use information from geothermal lessees to determine if the lessee qualifies for lease extensions. We collect non-form information to determine if a lessee is making diligent and bona fide efforts to utilize and produce geothermal resources.

Frequency: Occasional, annual, 5-year, monthly, and nonrecurring.

Description of Respondents: Lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight.

Estimated Completion Time: 1 to 10 hours depending on the form filed and 2 hours for each report submitted.

Annual Responses: 760 for the forms and 75 for reports.

Application Fee Per Response: 0.

Annual Burden Hours: 1,850.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 13, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–1867 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–04–1420–BJ]

Montana: Filing of Plats of Amended Protraction Diagrams

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of amended protraction diagrams.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of the amended protraction diagrams of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagrams were prepared at the request of the U.S. Forest Service and are necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

The lands for the prepared amended protraction diagrams are:

Principal Meridian

Montana

Tps. 25, 26, 27, and 28 N., Rs. 17, 18, and 19 W.

The plat, representing the Amended Protraction Diagram 38 Index of unsurveyed Townships 25, 26, 27, and 28 North, Ranges 17, 18, and 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 25 N., R. 17 W.

The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 25 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 26 N., R. 17 W.

The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 26 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 27 N., R. 17 W.

The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 27 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 28 N., R. 17 W.

The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 28 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 26 N., R. 18 W.
The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 26 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 27 N., R. 18 W.
The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 27 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 28 N., R. 18 W.
The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 28 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 27 N., R. 19 W.
The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 27 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 28 N., R. 19 W.
The plat, representing Amended Protraction Diagram 38 of unsurveyed Township 28 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

Tps. 29, 30, 31, and 32 N., Rs. 18, 19, 20, 21, and 22 West.
The plat, representing the Amended Protraction Diagram 42 Index of unsurveyed Townships 29, 30, 31, and 32 North, Ranges 18, 19, 20, 21, and 22 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 29 N., R. 19 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 29 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 18 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 30 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 19 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 30 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 20 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 30 North, Range 20 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 18 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 31 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 19 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 31 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 21 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 31 North, Range 21 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 18 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 32 North, Range 18 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 19 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 32 North, Range 19 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 20 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 32 North, Range 20 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 21 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 32 North, Range 21 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 22 W.
The plat, representing Amended Protraction Diagram 42 of unsurveyed Township 32 North, Range 22 West, Principal Meridian, Montana, was accepted October 10, 2003.

Tps. 29, 30, 31, and 32 N., Rs. 14, 15, 16, and 17 West.
The plat, representing the Amended Protraction Diagram 43 Index of unsurveyed Townships 29, 30, 31, and 32 North, Ranges 14, 15, 16, and 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 29 N., R. 14 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 29 North, Range 14 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 29 N., R. 16 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 29 North, Range 16 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 29 N., R. 17 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 29 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 14 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 30 North, Range 14 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 15 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 30 North, Range 15 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 16 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 30 North, Range 16 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 30 N., R. 17 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 30 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 14 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 31 North, Range 14 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 15 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 31 North, Range 15 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 31 N., R. 16 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 31 North, Range 16 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 14 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 32 North, Range 14 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 15 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 32 North, Range 15 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 16 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 32 North, Range 16 West, Principal Meridian, Montana, was accepted October 10, 2003.

T. 32 N., R. 17 W.
The plat, representing Amended Protraction Diagram 43 of unsurveyed Township 32 North, Range 17 West, Principal Meridian, Montana, was accepted October 10, 2003.

Tps. 33, 34, 35, 36, and 37 N., Rs. 21, 22, 23, and 24 W.
The plat, representing the Amended Protraction Diagram 47 Index of unsurveyed Townships 33, 34, 35, 36, and 37 North, Ranges 21, 22, 23, and 24 West, Principal Meridian, Montana, was accepted October 24, 2003.

T. 33 N., R. 21 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 33 North, Range 21 West, Principal Meridian, Montana, was accepted October 24, 2003.

T. 33 N., R. 22 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 33 North, Range 22 West, Principal Meridian, Montana, was accepted October 24, 2003.

T. 34 N., R. 21 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 34 North, Range 21 West, Principal Meridian, Montana, was accepted October 24, 2003.

T. 34 N., R. 22 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 34 North, Range 22 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 34 N., R. 23 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 34 North, Range 23 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 35 N., R. 22 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 35 North, Range 22 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 35 N., R. 23 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 35 North, Range 23 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 35 N., R. 24 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 35 North, Range 24 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 21 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 36 North, Range 21 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 22 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 36 North, Range 22 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 23 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 36 North, Range 23 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 24 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 36 North, Range 24 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 21 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 37 North, Range 21 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 22 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 37 North, Range 22 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 23 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 37 North, Range 23 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 24 W.
The plat, representing Amended Protraction Diagram 47 of unsurveyed Township 37 North, Range 24 West, Principal Meridian, Montana, was accepted October 24, 2003.
Tps. 34, 35, 36, and 37 N., Rs. 25 and 26 W.
The plat, representing the Amended Protraction Diagram 48 Index of unsurveyed Townships 34, 35, 36, and 37 North, Ranges 25 and 26 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 34 N., R. 25 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 34 North, Range 25 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 35 N., R. 25 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 35 North, Range 25 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 25 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 36 North, Range 25 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 36 N., R. 26 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 36 North, Range 26 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 25 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 37 North, Range 25 West, Principal Meridian, Montana, was accepted October 24, 2003.
T. 37 N., R. 26 W.
The plat, representing Amended Protraction Diagram 48 of unsurveyed Township 37 North, Range 26 West, Principal Meridian, Montana, was accepted October 24, 2003.

We will place copies of the plats of the amended protraction diagrams we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these amended protraction diagrams, as shown on these plats, prior to the date of the official filings, we will stay the filings pending our consideration of the protest.

We will not officially file these plats of the amended protraction diagrams until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: January 20, 2004.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 04–1844 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Draft Environmental Impact Statement, Saguaro National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement for the Fire Management Plan, Saguaro National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of draft Environmental Impact Statement for the Fire Management Plan, Saguaro National Park.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after publication of this notice. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, Arizona, 520–733–5100, *sagu_management@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Fire Management Officer, Saguaro National Park, 520–733–5130.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Saguaro National Park, 3693 South Old Spanish Trail, Tucson, AZ 85730–5699. You may also comment via the Internet to *sagu_management@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Fire Management Officer'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Fire Management Officer, 520–733–5130. Finally, you may hand-deliver comments to Administrative Office, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, AZ. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 inspection in their entirety.

Dated: December 9, 2003.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–1879 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–08–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc: Saratoga National Historical Park, NY; Draft General Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Draft General Management Plan / Draft Environmental Impact Statement (GMP/EIS) for Saratoga National Historical Park, New York. Consistent with the park's mission, National Park Service policy, and other laws and regulations, the Draft GMP/EIS presents four alternatives to guide park management over the next 15 to 20 years. The alternatives incorporate various management prescriptions to ensure protection and public enjoyment of the park's resources. The report also evaluates potential environmental consequences of implementing the alternatives. Impact topics include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, and impairment. Alternative D is the preferred alternative.

DATES: The Draft GMP/EIS will be on public review for 60 days from 1/2/04 through 3/1/04. Public meetings will be held during this period and will be publicized in local media outlets.

FOR FURTHER INFORMATION OR TO REQUEST A COPY OF THE DOCUMENT CONTACT: Superintendent, Saratoga National Historical Park, 648 Route 32, Stillwater, NY 12170–1604 at telephone (518) 664–9821 or fax (518) 664–9830.

Please submit comments to the Superintendent in writing at the above address or fax, or submit comments electronically to *sara_info@nps.gov.* After public and interagency review of the Draft GMP/EIS, comments will be considered, and a Final GMP/EIS, followed by a Record of Decision, will be prepared. The process is scheduled for completion in 2004.

Dated: December 2, 2003.

Robert W. McIntosh,

Associate Regional Director, Planning & Partnerships, Northeast Region.

[FR Doc. 04–1880 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Task Force Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve.

ACTION: Notice of task force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, Section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 3 p.m. at the following location and date:

DATES: Wednesday, March 3, 2004.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION, CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting will include a review of the public open houses and focus group meetings to be held in January 2004 with citizens, local cultural and historical organizations, and governmental bodies to include Federal, State, and local entitities. The design team will present the main alternatives from the meetings. Future meeting dates for 2004 will be selected. This meeting will be open to the public, however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: January 8, 2004.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 04–1881 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–E7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of February 20, 2004 Meeting.

SUMMARY: This notice sets forth the date of the February 20, 2004 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting will be held on February 20, 2004 from 9 a.m. to 12 Noon.

Location: The meeting will be held at the Flight 93 National Memorial office, 109 West Main Street, Newberry Building, Somerset, Pennsylvania, 15501.

Agenda:

The February 20, 2004 meeting will consist of: (1) Opening of Meeting and Pledge of Allegiance; (2) Review and Approval of Minutes from November 14, 2003; (3) Reports from the Flight 93 Memorial Task Force Committees and the National Park Service Administration Committee, Lands/Resource Assessment Committee, Memorial Ideas Planning Committee, Design Solicitation Committee, Fundraising Committee, Government Relations Committee, Public Relations Committee, Archives Committee, Temporary Memorial Management Committee, Family Memorial Committee, Families of Flight 93, Inc.,

National Park Service. (4) Old Business. (5) New Business. (6) Citizens Open Forum. (7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: January 9, 2004.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 04–1877 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–WH–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Public Meetings for Calendar Year 2004

Notice is hereby given that six public meetings of the Golden Gate National Recreation Area (GGNRA) will be scheduled bimonthly for calendar year 2004 to hear presentations on issues related to management of the Golden Gate National Recreation Area. These public meetings are scheduled for the following dates at San Francisco and at locations yet to be determined in San Mateo County and Marin County, California: Tuesday, March 16—San Francisco, CA; Tuesday, May 18—Marin County, CA location; Tuesday, July 20—San Mateo County, CA location; Tuesday, September 21—San Francisco, CA; Tuesday, November 16—Location To Be Determined.

Some public meetings may be joint meetings with the Presidio Trust. All public meetings will be held at 7 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except those on Tuesday. March 16 and Tuesday, May 18, which will be held at 7 p.m. at locations to be announced in San Mateo County and Marin County, California. Information confirming the time and location of all public meetings or cancellations of any meeting can be obtained by calling the Office of Public Affairs at (415) 561–4733 or (415) 561–4730.

Anticipated possible agenda items at public meetings during calendar year 2004 may include:

- Workshops on the Marin Headlands Comprehensive Transportation Mgmt. Plan
- Scoping for Updated General Management Plan
- Updates on Planning Issues for Fort Baker Education and Retreat Center
- Updates on schematic and program design process for Fort Baker Waterfront
- Updates on Crissy Field Marsh Study
- Scoping and Alternatives for Golden Gate's Water Transportation System
- Fort Mason Officer's Club Interim Use
- Reports and updates on the Cliff House Reconstruction Project and other elements of the Sutro District Comprehensive Design Plan, including the Merrie Way Visitor Center design presentation
- Update Report on Big Lagoon Project and other natural resource projects
- Update reports on Seismic Work on the Fort Mason Piers
- Alcatraz construction: update on Laundry Building stabilization and adaptive use
- Update on Marin County plans for Bolinas Lagoon
- Doyle Drive planning update
- Update on Fort Mason Center Long-Term Lease
- Update on Point Reyes National Seashore and GGNRA Northern District General Management Plan Process
- Update on Marin Headlands/Fort Baker Transportation Management Plan (TMP) Alternatives
- Update on Marine Mammal Center Campus Improvement Plans
- Update on Redwood Creek Watershed planning
- Project Status Updates on the Golden Gate Trails Forever Program
- Updates on GGNRA's 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Golden Gate Parks Conservancy annual briefing
- Update on park expansion legislation
- Issues affecting San Mateo County national park lands
- Updates on upper Fort Mason planning
- Update on issues concerning areas managed by the Presidio Trust, including Presidio Main Post Design Plan Update
- Scoping for Trails Plan for Park Properties in San Mateo County
- Update on Fire Management Plan
- Update on Site Stewardship Program
- Update on Dog Management Negotiated Rulemaking Process

These meetings will also contain GGNRA Superintendent's Report and when available, a report of the Presidio Trust Director.

Specific final agendas for these meetings will be made available to the public at least 20 days prior to each meeting and can be received by contacting the Office of Public Affairs, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site *www.nps.gov/goga* under the section ''Public Meetings''.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting.

Dated: December 15, 2003.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 04–1878 Filed 1–28–04; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Juan Bautista de Anza National Historic Trail Advisory Commission; Notice of Meeting

SUMMARY: Notice is given in accordance with the Federal Advisory Committee Act that the second meeting of the Juan Bautista de Anza National Historic Trail Advisory Commission will be held as follows:

DATES/TIMES: Saturday, February 7, 8 a.m. to 4:30 p.m. and Sunday, February 8, 8 a.m. to 12 p.m., 2004.

ADDRESSES: The meeting will be held in meeting room #2 at Palm Canyon Resort, 221 Palm Canyon Drive, Borrego Springs, CA 92004. A field trip to Anza-Borrego Desert State Park visitor center will occur on the afternoon of February 7. The public is welcome, but transportation will only be provided to commission members.

FOR FURTHER INFORMATION AND COPIES OF MEETING MINUTES CONTACT: Meredith Kaplan, Juan Bautista de Anza National Historic Trail, 1111 Jackson Street, Suite 700, Oakland, California 94607, at 510–817–1438, or *meredith_kaplan@nps.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Commission was established in accordance with the National Trails System Act 915 U.S.C. 1241 *et seq.*), as amended by Public Law 191–365 to consult with the Secretary of the Interior on planning and other matters relating to the trail.

This meeting was originally scheduled for November 1 and 2, 2003 (**Federal Register** notice V68, N190, P56648 of 10/1/03), but due to the fires in southern California and the use of the meeting site as an evacuation center for the town of Julian, the meeting was rescheduled.

Agenda

1. Welcome.
2. Review trail status.
3. Discuss Annual Interpretive Plan and identify funding sources.
4. Review list of trail segments with list of constituencies and groups.
5. Develop promotional package.
6. Discuss attracting and keeping volunteers.
7. Plan for future of council.

This meeting is open to the public and opportunity will be provided for public comments at specific times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission.

Dated: December 22, 2003.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 04–1882 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–4R–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains were removed from the vicinity of Fort Robinson, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Bureau of Indian Affairs professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and Yankton Sioux Tribe of South Dakota.

In 1879, human remains representing a minimum of one individual were recovered from the vicinity of Fort Robinson, Dawes and Sioux Counties, NE. Assistant Surgeon W.B. Brewster shipped the skull and mandible of the individual, along with the remains of eight other individuals, to the Army Medical Museum, Washington, DC, in 1880. At an unknown date, the human remains were acquired by Major General Joseph L. Bernier who had worked as a pathologist with the U.S. Army and had served several years cataloging the Army Medical Museum collections. Major General Bernier's son, Joseph Bernier, D.D.S., discovered the human remains in his father's personal effects and felt they should be returned to their homeland. In August 2002, Dr. Bernier donated the remains to the Bureau of Indian Affairs, Southern Plains Region, Concho Agency, El Reno, OK. The National Museum of Health and Medicine, formerly the Army Medical Museum, has been contacted regarding the human remains and has not asserted control over them. Accompanying the human remains is a weathered 1.5–by–4–inch card with the following typed information: ''7023 Path. Series. Shot fracture and perforation of skull: one bullet entered thro [sic] right parietal, emerged thro [sic] left temporal; Cheyenne Indian, killed near Fort Robinson, Nebraska, January, 1879. W.B. Brewster, Asst. Surg. U.S.A.'' On the back of the card was written in pencil: ''D Knife.'' No known individual was identified. No funerary objects are present.

The Bureau of Indian Affairs notified all Indian tribes that were likely to be culturally affiliated with the human remains or from whose aboriginal lands the human remains originated, including the Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and Yankton Sioux Tribe of South Dakota. The notification stated that the Bureau of Indian Affairs had the human remains under its control and was beginning the process of determining the cultural affiliation of the human remains.

Following consultation, representatives of the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana agreed that the human remains and accompanying card should be examined by the staff of the Smithsonian Institution, National Museum of Natural History, Repatriation Office. A review of the Army Medical Museum archives, now part of the National Museum of Health and Medicine, indicates that Path. Series 7023 was assigned to a skull of a Cheyenne male who was killed near Fort Robinson in 1879. The skull identified as Path. Series 7023 is unaccounted for in the National Museum of Health and Medicine collection. The paper, typing, and format of the card accompanying the human remains is similar to cards typically used by the Army Medical Museum. The pencilled note on the back of the card may refer to Dull Knife, the Cheyenne leader of the Fort Robinson breakout on January 9, 1879. Dull Knife was nearly 70 years old at the time and survived the Fort Robinson breakout. Physical examination

indicates that the human remains are from a 25–30–year-old male. The condition of the skull indicates that it was obtained shortly after death. Measurements of the skull are nearly identical to the measurements for Path. Series 7023 in the Army Medical Museum archives. Comparison of measurements from the skull with measurements from skulls from several Plains tribes indicates that the Cheyenne and Sioux are the most likely groups for biological affinity. A discriminant analysis of the measurements indicates that the skull is much more similar to the Sioux group, but a Cheyenne affiliation cannot be excluded. The human remains are currently in the possession of the Smithsonian Institution, National Museum of Natural History, Repatriation Office.

Representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and Yankton Sioux Tribe of South Dakota have agreed to the repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Officials of the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3003 (d)(2)(B), there is a relationship of shared group identity that can be clearly traced between the Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. Officials of the Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3003 (d)(2)(C), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and Yankton Sioux Tribe of South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Carolyn McClellan, National Collections Manager and NAGPRA Coordinator, Bureau of Indian Affairs, 1849 C Street NW, MS–2472–MIB, Washington, DC, telephone (202) 208–4401, before March 1, 2004. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Bureau of Indian Affairs is responsible for notifying the Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: December 8, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–1884 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the San Diego Museum of Man, San Diego, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA. The human remains and cultural items were removed from Cuyamaca Rancho State Park, Descanso, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the San Diego Museum of Man and the California Department of Parks and Recreation professional staff in consultation with the Kumeyaay Cultural Repatriation Committee, authorized representative of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California. The San Diego Museum of Man and the

California Department of Parks and Recreation also consulted with Kwaaymii elder Carmen Lucas.

In the 1930s, Malcolm Rogers and fellow associates of the San Diego Museum of Man conducted excavations at several sites in Cuyamaca Rancho State Park, Descanso, San Diego County, CA. Unassociated funerary objects removed from the park are described in a companion notice.

Human remains representing a minimum of two individuals were removed from cremation site SDM-W–211, West Mesa. No known individuals were identified. The 19 associated funerary objects are 1 bead, 12 projectile points, 2 ollas, 1 pipe, 1 abalone pendant, 1 cook pot, and 1 container of groundstone fragments.

Human remains representing a minimum of seven individuals were removed from site SDM-W–247 between Cuyamaca Lake and Stonewall Peak near today's Los Caballos Campground. No known individuals were identified. The 444 associated funerary objects are 11 projectile points, 2 spear points, a minimum of 347 loose sherds, 1 bag of uncounted sherds, 1 box of uncounted sherds, 1 unidentified groundstone, 1 groundstone fragment, 2 rock fragments, 1 scraper, 2 lithic flakes, 17 pieces of charcoal and chalkstone, 1 bag of red ochre, 1 piece white marl, 2 fragments of arrow straightener, 4 bone pendants, 1 bone flaker, 2 burned shell fragments, 11 bone fragments, 5 bead waste fragments, 2 awls, 1 bone tool fragment, 4 rocks, 1 piece of white ochre, 2 olivella bead fragments, 4 cremation urns (1 broken into 72 pieces), 1 burned wood fragment, 1 crab claw fragment, 6 animal teeth, and 9 animal bones.

Human remains representing a minimum of 15 individuals were removed from site SDM-W–263 near today's Paso Picacho Campground. No known individuals were identified. The 2,068 associated funerary objects are 11 cremation urns and cremation covers, a minimum of 1,048 olivella beads, 1 olivella disc, 2 fish vertebrae beads, 17 shell fragments, a minimum of 544 sherds, 9 fish vertebrae, 1 rock spall, 19 pieces of animal bone, 3 pieces of fired clay, 25 pieces of charcoal and earth fragments, 2 bags of charcoal and earth fragments, 1 tarring pebble, 1 bone pipe, 2 bone awls, 2 ceramic bases, 16 samples of bead waste, 4 flakes, 3 rocks, 2 dome scrapers, 15 ochre fragments, 3 ceramic pendants, 1 knife, 2 seeds, 52 projectile points, 1 glass tool fragment, 2 textile fragments, 1 pine cone spine, 1 quartz tool fragment, a minimum of 221 glass and 27 shell beads, 6 biface fragments, 2 arrow straightener fragments, 14 burned earth clumps, 1 piece of serpentine, 1 polished stone, and 5 stone fragments.

The human remains and associated funerary objects removed by Malcolm Rogers and his associates date from the Late Prehistoric to the Historic period, (A.D. 500 to A.D. 1800). Archeological investigation in the western San Diego County area dates the Kumeyaay (Diegueno) occupation of the region to the Late Prehistoric period. Geographic affiliation is consistent with historically documented Kumeyaay territory. Therefore, the California Department of Parks and Recreation Committee on Repatriation has determined that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and present-day Federally recognized Kumeyaay Indian tribes represented by the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 24 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 2,531 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–7976, before March 1, 2004. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; Kumeyaay Cultural Repatriation Committee; and Kwaaymii elder Carmen Lucas that this notice has been published.

Dated: December 16, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–1883 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: San Diego Museum of Man, San Diego, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the San Diego Museum of Man, San Diego, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001. The human remains and cultural items were removed from Cuyamaca Rancho State Park, Descanso, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In the 1930s, Malcolm Rogers and fellow associates of the San Diego Museum of Man conducted excavations at several sites in Cuyamaca Rancho State Park, Descanso, San Diego County, CA. The human remains and associated funerary objects removed from the park are described in a companion notice. The 169 unassociated funerary objects removed from Site SDM-W–211.1–A, West Mesa, are 168 potsherds and 1 lithic flake. One box of sherds cannot be located.

The unassociated funerary objects date from the Late Prehistoric to the Historic period (A.D. 500 to A.D. 1800). Archeological investigation in the western San Diego County area dates the Kumeyaay (Diegueno) occupation of the region to the Late Prehistoric period. Geographic affiliation is consistent with historically documented Kumeyaay territory. Therefore, the California Department of Parks and Recreation Committee on Repatriation has determined that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and present-day Federally recognized Kumeyaay Indian tribes represented by the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001(3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–7976, before March 1, 2004. Repatriation of the unassociated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Kumeyaay Cultural Repatriation Committee, Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: December 16, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–1885 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–50??–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Regional Criteria For Evaluating the Water Management Plan for the Sacramento River Contractors

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The ''Regional Criteria for Evaluating Water Management Plans for the Sacramento River Contractors'' (Regional Criteria) are available for public comment. The Regional Criteria were developed by the U.S. Bureau of Reclamation (Reclamation) under the authority of the Central Valley Project Improvement Act of 1992 (CVPIA) and in accordance with the Reclamation Reform Act of 1982 (RRA).

The development and implementation of these Regional Criteria for the Sacramento Valley Contractors is an alternative ''experimental'' pilot

program to the current ''Standard Criteria for Evaluating Water Management Plans'' (Standard Criteria). The Sacramento River Contractors that participate in the development of a Regional Water Management Plan (Plan) will have 5 years in which to successfully implement their Plan under these approved Regional Criteria. If the Contracting Officer deems this pilot program to be unsuccessful, these Regional Criteria will be discontinued. All subsequent Plans would then be evaluated under the then current Standard Criteria.

DATES: All public comments must be received by March 1, 2004.

ADDRESSES: Please mail comments to Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Leslie Barbre at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: These Regional Criteria were developed by Reclamation under the authority of the CVPIA and in accordance with the RRA. These Regional Criteria state that all Participating Contractors that take delivery of Municipal and Industrial (Urban) water in excess of 2,000 acre-feet and/or Agricultural water to serve over 2,000 irrigable acres will be evaluated based on the required information detailed in the sections listed below.

1. Description of the Region Covered by the Plan
2. Inventory of Water Resources
3. Identify Regional Water Measurement Program
4. Analyze Water Management Quantifiable Objectives (QOs)
5. Identify Actions to Implement and Achieve Proposed QOs
6. Establish Monitoring Program
7. Budget and Allocation of Regional Costs
8. Regional Plan Coordination
9. Five-Year Plan Revision Procedure

Reclamation will evaluate the Plan based on these Regional Criteria.

Public comments for the Regional Criteria for the Sacramento River Contractors are now being accepted.

Dated: December 1, 2003.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 04–1902 Filed 1–28–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Village of Orland Park,* (ND IL) Case No. 04 C 220, was lodged with the United States District Court for the Northern District of Illinois on January 21, 2004. This proposed Consent Decree concerns a complaint filed by the United States against the Village of Orland Park, pursuant to section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt N. Lindland, Assistant United States Attorney, U.S. Attorney's Office, Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Village of Orland Park,* USA No. 2003V2834. The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois 60604. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. 04–1869 Filed 1–28–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public comments on the Proposed Final Judgment in United States v. General Electric Company and Instrumentarium OYJ

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the one comment received on the proposed Final Judgment in *United States* v. *General Electric Company and Instrumentarium OYJ,* Civil No. 1:03CV01923, filed in the United States District Court for the District of Columbia, together with the response of the United States to the comment. On September 16, 2003, the United States filed a Complaint alleging that General Electric Company's proposed acquisition of Instrumentarium OYJ would substantially lessen competition in the sale and development of patient monitors used to take the vital physiologic measurements of patients requiring critical care (''critical care monitors'') and of mobile, full-size C-arms used for surgical, orthopedic, pain management, and basic vascular procedures, in violation of Section 7 of the Clayton Act. To restore competition in these markets, the proposed Final Judgment, if entered, would require General Electric company to fully divest two Instrumentarium OYJ businesses: Spacelabs, which was its primary critical care monitors business, and Ziehm, the business through which it developed and sold C-arms. Public comment was invited within the statutory 60-day comment period. The comment and the response of the United States thereto are hereby published in the **Federal Register**, and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Final Judgment. Copies of the Complaint, the proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 Seventh Street, NW., Washington, DC 20530, *telephone:* (202) 514–2481 and the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same locations shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

Response to Public Comment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''Tunney Act''), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. After careful consideration of the comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation

alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On September 16, 2003, the United States filed the Complaint in this matter alleging that the proposed acquisition of Instrumentarium OYJ (''Instrumentarium'') by General Electric Company (''GE'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the United States and the defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on October 30, 2003; published the proposed Final Judgment and CIS in the **Federal Register** on November 12, 2003; and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the Washington Post for seven days beginning on November 9, 2003 and ending on November 16, 2003. The 60-day period for public comments, during which one comment was received as described below, expired on January 12, 2004.

I. Background

As explained more fully in the Complaint and CIS, this transaction lessened competition in the sale and development of patient monitors used to take the vital physiologic measurements of patients requiring critical care (''critical care monitors'') and of mobile, full-size C-arms used for surgical, orthopedic, pain management, and basic vascular procedures. To restore competition in these markets, the proposed Final Judgment, if entered, would require GE to fully divest two Instrumentarium businesses: Spacelabs, which was its primary critical care monitors business, and Ziehm, the business through which it developed and sold C-arms. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comment and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e). The Court, in making its public interest determination, should apply a deferential standard and should withhold its approval only under limited conditions. Specifically, the Court should review the proposed Final Judgment in light of the violations charged in the complaint and ''withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.'" *Mass. Sch. of Law* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

It is not proper during a Tunney Act review ''to reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft,* 56 F.3d at 1459; *see also United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6–7 (D.D.C. 2003) (rejecting argument that court should consider effects in markets other than those raised in the complaint); *United States* v. *Pearson PLC,* 55 F. Supp. 2d 43, 45 (D.D.C. 1999) (noting that a court should not ''base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint''). Because ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters the United States might have but did not pursue. *Microsoft,* 56 F.3d at 1459–60; *see also United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (noting that a Tunney Act proceeding does not permit ''*de novo* determination of facts and issues'' because ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General'' (citations omitted)).

Moreover, the United States is entitled to ''due respect'' concerning its ''prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case'' *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d at 6 (citing *Microsoft,* 56 F.3d at 1461).

III. Summary of Public Comment

The United States received a comment from one entity, Visiontec (comment attached as Exhibit 1). Visiontec, a company providing electronic services, states that it entered into a manufacturing agreement with Spacelabs in September 2001, prior to Instrumentarium's purchase of Spacelabs. Visiontec expressed concerns about Instrumentarium's adherence to this manufacturing agreement, claiming that Instrumentarium made a deliberate decision not to adhere to the agreement after its purchase of Spacelabs, and that the pace at which Visiontec is being disengaged has accelerated since General Electric's acquisition of Instrumentarium was announced. Visiontec asked that the United States provide assistance, including the imposition of provisions to protect it, prior to approving the acquisition of Spacelabs.

IV. The United States' Response to Comment

The concerns raised in the comment appear to relate to a possible contractual dispute between Visiontec and Spacelabs, Instrumentarium, or GE. They do not relate to the sufficiency of the relief in the proposed Final Judgment, whether the proposed Final Judgment is in the public interest, or otherwise raise issues appropriate for action by the Antitrust Division. Thus, Visiontec's concerns do not provide any basis for establishing any conditions in connection with the divestitures required by the proposed Final Judgment or warrant any other action by the United States.

V. Conclusion

After careful consideration of this public comment, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comment and Response to the **Federal Register** for publication. After the comment and Response are published in the **Federal Register**, the United States will move this Court to enter the proposed Final Judgment.

Dated this ____ day of January 2004.

Respectfully submitted,

Joan Hogan,
DC No. 451240, Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

Certificate of Service

The undersigned certifies that a copy of the Response to Public Comment was served on the following counsel by electronic mail in PDF format or hand delivery, this ____th day of January 2004:

Deborah L. Feinstein,
Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206.

Joan Hogan, DC Bar No. 451240,
U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

October 24, 2003

Mr. James R. Wade
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
325 Seventh Street, NW., Suite 300
Washington, DC 20530

Dear Mr. Wade,

I am writing with regard to the proposed acquisition of Instrumentarium OYJ by General Electric Corporation, specifically the part of the settlement reached that includes General Electric divestiture of Instrumentarium's Spacelabs subsidiary.

Visiontec is a privately held company providing electronic manufacturing services located in Spokane, Washington. It began a seven-year manufacturing agreement with Spacelabs in September 2001, prior to being purchased by Instrumentarium in 2002. Visiontec produces approximately 50% of the electronic circuit cards used in Spacelabs medical equipment sold to hospitals. Spacelabs is Visiontec's largest customer.

After the Instrumentarium purchase of Spacelabs completed in June of 2002, Instrumentarium made a deliberate decision not to adhere to the manufacturing agreement originally between Spacelabs and Visiontec prior to the acquisition. Since General Electric's acquisition announcement of

Instrumentarium, the pace and approach at which to disengage Visiontec has accelerated.

As Instrumentarium's subsidiary Spacelabs is being positioned to be sold, it has selectively and deliberately moved product from Visiontec, delayed and then cancelled orders that should have been produced by the terms of the manufacturing agreement. Instrumentarium has effectively and so stated that the manufacturing agreement was only a working document. These actions are preventing Visiontec the ability to pay back an obligation originally established with Spacelabs as well as preventing a recovery of the investment made by Visiontec.

As a result of Instrumentarium positioning Spacelabs in the most favorable position to be sold, some of that favorable positioning is coming at Visiontec's unwarranted expense. This is causing Visiontec cash flow and financial distress, severely damaging its ability to service its other customers, and a loss of fifty percent of its high-tech manufacturing work force.

It appears Instrumentarium's approach is to cause so much financial distress, that Visiontec becomes a non-viable company and thereby allowing them to remove Visiontec and the existing orders from the Spacelab books to better position Spacelabs for the prospective buyers.

Due to Visiontec's size, we would like to request assistance from the Department of Justice as to what kind of positive options may be available prior to approving the acquisition. We also request that the business practices of Instrumentarium's subsidiary Spacelabs dealing with Visiontec regarding the seven-year manufacturing agreement originally established with Spacelabs be reviewed.

Prior to completion of the acquisition approval by the Department of Justice, Visiontec would ask for suitable provisions to be established allowing Visiontec to remain viable for at least two years, otherwise the result is the company closes down.

Sincerely,

Rick L. Hansen,
President & CEO.
RLH\2355
c. Attorney General—State of Washington Chuck Cleveland. P.S.

[FR Doc. 04–1901 Filed 1–28–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Federal Mine Safety and Health Review Commission

Sunshine Act Meeting

January 20, 2004.

TIME AND DATE: 10 a.m., Thursday, January 29, 2004.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERD: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Dacotah Cement*, Docket No. CENT 2001–218–M. (Issues include whether Dacotah Cement satisfied the task training requirements of 30 CFR 46.7(d) when it permitted two miners to replace a hydraulic hose on a losche mill.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Jean H. Ellen,
Chief Docket Clerk.

[FR Doc. 04–1981 Filed 1–27–04; 1:34 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–011]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31490–1: Electrodynamic Tether;

NASA Case No. MFS–31814–1: Method for Producing Metal Lined, Composite Overwrapped Pressure Vessels;

NASA Case No. MFS–31815–1: Distributed Solid State Programmable Thermostat/Power Controller;

NASA Case No. MFS–31841–1: Material for Producing Composite Overwrapped Pressure Vessels That Are Impact Resistant and Suitable for Low Temperature Use;

NASA Case No. MFS–31944–1: Variable Distance Angular Symbology Reader;

NASA Case No. MFS–31952–1: Balanced Orifice Plate.

Dated: January 21, 2004.

Robert M. Stephens,
Deputy General Counsel.

[FR Doc. 04–1846 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–012]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–16499–1: Controlled Deposition and Alignment of Carbon Nanotubes;

NASA Case No. LAR–16539–1: Resonant Wingbeat Tuning Circuit Using Strain-Rate Feedback for Ornithoptic Micro Aerial Vehicles.

Dated: January 21, 2004.

Robert M. Stephens,
Deputy General Counsel.

[FR Doc. 04–1847 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–013]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy

Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No. KSC–12187: Fail Safe, Continue-To-Operate Device for Jackscrews;

NASA Case No. KSC–12236: Flame Suppression Agent, System and Uses;

NASA Case No. KSC–12246–2: Zero-Valent Metal Emulsion for Reductive Dehalogenation of DNAPLs;

NASA Case No. KSC–12246–3: Zero-Valent Metal Emulsion for Reductive Dehalogenation of DNAPLs;

NASA Case No. KSC–12386—Wireless Instrumentation System and Power Management;

NASA Case No. KSC–12394: Hypothesis Support Mechanism for Mid-Level Visual Pattern Recognition;

NASA Case No. KSC–12539: Self-Healing Wire Insulation.

Dated: January 21, 2004

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–1848 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–014]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark office, and is available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23436–1: Deployable Antenna.

Dated: January 21, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–1849 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–015]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Diana M. Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14608–1: Computing Frequency By Using Generalized Zero-Crossing Applied To Intrinsic Mode Functions;

NASA Case No. GSC–14616–1: Three-Dimensional Imaging Lidar;

NASA Case No. GSC–14718–1: Autocollimator With Two Dimensional Absolute Encoder.

Dated: January 21, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–1850 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–016]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855; fax (216) 433–6790.

NASA Case No. LEW–17293–2: Software for System for Controlling a Magnetically Levitated Rotor;

NASA Case No. LEW–17345–1: Temporal Laser Pulse Manipulation Using Multiple Optical Ring-Cavities;

NASA Case No. LEW–17429–1: Inert Processing of Cyclohexene Endcaps for Polymers With Improved Thermal Oxidative Stability;

NASA Case No. LEW–17494–1: Self-Sealing, Smart, Variable Area Nozzle (S3VAN) for Dynamic Flow Control In Gas Turbine Engines;

NASA Case No. LEW–17510–1: Torsional Magnetorheological Fluid Resistant Device (TMRFRD).

Dated: January 21, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–1851 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–017]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Rob M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–14710–1: Enhanced Elliptic Grid Generation;

NASA Case No. ARC 14756–1: Accurate Display, Simulation and Interaction in a Desktop Virtual Environment;

NASA Case No. ARC 15023–1: Electronic Hardware for Improved Haptic Interface Performance;

NASA Case No. ARC 15073–1: Multi-User Investigation Organizer.

Dated: January 21, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–1852 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–020]

NASA Earth System Science and Applications Advisory Committee, Earth Science Information Systems and Services Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Earth System Science and Applications Advisory Committee (ESSAAC), Earth Science Information Systems and Services Subcommittee (ESISSS).

DATES: Tuesday, February 17, 2004, 8:30 a.m. to 5 p.m. and Wednesday, February 18, 2004, 8:30 a.m. to 5 p.m.

ADDRESSES: Scripps Institution of Oceanography (SIO), 4500 Hubbs Hall, La Jolla, California 92093.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Maiden, Code YF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1078.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome
—Charge to Subcommittee
—Goals and Agenda
—State of Earth Science Enterprise (ESE) Data and Information Systems and Services
—Major Issues Identified
—Earth Observation System Data and Information System Technology Snapshot
—Additional and Emerging Systems Technology Snapshot
—Distributed Active Archive Centers' Technology Snapshot
—User Characterization and Metrics
—Technology Infusion
—Data and Information Management Plan
—Chair's Remarks/Review of Agenda
—ESE Overview
—Technology Subcommittee Report
—What Makes a Modern Grid?
—Overview of NASA's Information Infrastructure
—ESE Data & Information Management Plan
—ESE FY03 Performance Discussion
—Progress on Other ESE Plans
—Committee Deliberations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of key participants. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for Office of External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–1855 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–018]

NASA Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Tuesday, February 24, 2004, 8:30 a.m. to 5:30 p.m.; and Wednesday, February 25, 2004, 8:30 a.m. to 3 p.m.

ADDRESSES: Inn and Conference Center, University of Maryland, Room 1105, 3501 University Boulevard East, Adelphi, Maryland 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Hashima Hasan, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/395–0710, *hhasan@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Associate Administrator's Report on Space Science Programs
- Astronomy and Physics Director's Report on Astronomy and Physics Programs
- Theme Scientist's Report on Origins Theme Program
- Discussion of Astronomy and Physics Research and Technology Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–1853 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–019]

NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Tuesday, February 24, 2004, 8:30 a.m. to 5:30 p.m.; and Wednesday, February 25, 2004, 8:30 a.m. to 4 p.m.

ADDRESSES: Inn and Conference Center, University of Maryland, Room 2100, 3501 University Boulevard East, Adelphi, Maryland 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Hertz, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0986, *paul.hertz@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Associate Administrator's Report on Space Science Programs
—Astronomy and Physics Director's Report on Astronomy and Physics Programs
—Theme Scientist's Report on SEU Theme Program
—Discussion of Astronomy and Physics Research and Technology Programs
—Planning for Future Roadmapping Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–1854 Filed 1–28–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Knowledge Base for Post-Fire Safe-Shutdown Analysis, Availability of Draft NUREG 1778

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for public comment.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of Draft NUREG–1778, ''Knowledge Base for Post-Fire Safe-Shutdown Analysis,'' January, 2004. The NRC is seeking comment from interested parties on the clarity and utility of the draft NUREG. The NRC will consider comments received in its final issue of NUREG–1778.

DATES: Comment period expires March 29, 2004. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Draft NUREG–1778 is available for inspection and copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of January 30, 2004, you may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic reading Room at *http://www.nrc.gov/reading-rm.html.*

Submit written comments to the Chief, Rules Review and Directive Branch, Mail Stop: T6-D59 U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

A free single copy of Draft NUREG–1778, to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001 facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov.*

Some publications in NUREG-series that are posted at NRC's Web site address *http://www.nrc.gov/NRC/NUREGS/indexnum.html* are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: Mark H. Salley, Office of Nuclear Reactor Regulation, Mail Stop O11 A11, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. E-mail *MXS3@nrc.gov.* Telephone: 301–415–2840 FAX: 301–415–2300.

SUPPLEMENTARY INFORMATION: As a result of a major fire that occurred at the Browns Ferry Nuclear Power Plant in 1975, the U.S. Nuclear Regulatory Commission (NRC) significantly revised its regulatory framework to enhance fire protection programs (FPPs) at operating nuclear power plants (NPPs). The revised criteria used in this framework had three main objectives to (1) prevent significant fires, (2) ensure the capability to shutdown the reactor and maintain it in a safe-shutdown condition, and (3) minimize radioactive releases to the environment in the event of a significant fire.

Recent Sandia National Laboratories (SNL) studies have shown that the revised criteria are beneficial to safety. Plant design changes required by the new regulatory framework have been effective in preventing a recurrence of a fire event of the severity experienced at Browns Ferry. In addition, according to a 1989 study performed by SNL plant modifications made in response to the new requirements have reduced the core damage frequencies (CDFs) at some plants by a factor of 10.

The NRC's regulatory framework provides several options for ensuring that structures, systems, and components (SSCs) important to safe shutdown are adequately protected from the effects of fire. Because of the potentially unacceptable consequences that an unmitigated fire may have on plant safety, each operating plant must perform a documented evaluation to demonstrate that, in the event a fire were to initiate and continue to burn (in spite of prevention and mitigation features), the performance of essential shutdown functions will be preserved and radioactive releases to the environment will be minimized. The document that describes this evaluation process and its results is commonly referred to as a ''safe-shutdown analysis'' (SSA).

Fire protection for NPPs is a complex subject. The purpose of this document is to facilitate understanding of the regulatory framework of the Fire Protection Program by compiling the related knowledge into a single document. This document assumes that the reader has had little or no involvement in the development and/or implementation of fire protection criteria, post-fire safe-shutdown analysis, or any of its related engineering disciplines. The criteria and assumptions described in this document are based on the NRC's regulatory framework for fire protection, as it was in place at the time of this writing. This document only clarifies existing criteria. This document does not contain any new or different staff positions and does not impose any new requirements. The knowledge base documented in this NUREG-series report must be used within the context of the licensing basis of each individual plant and with due consideration for the NRC's Backfit rule, as specified in Title 10, Section 50.109, Code of Federal Regulations (10 CFR 50.109).

Date at Rockville, Maryland, this 20 day of January, 2004.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 04–1899 Filed 1–28–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26338; File No. 812–13022]

IDS Life Insurance Company, et al., Notice of Application

January 22, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: IDS Life Insurance Company (''IDS Life''), IDS Life Insurance Company of New York (''IDS Life of New York''), American Enterprise Life Insurance Company (''American Enterprise Life''), American Centurion Life Assurance Company (''American Centurion Life'') (each, an ''Insurance Company'' and collectively, the ''Insurance Companies''), American Express Financial Advisors Inc. (''AEFA''), IDS Life Variable Account 10 (''IDS Life Account''), IDS Life of New York Variable Annuity Account (''IDS Life of New York Account''), American Enterprise Variable Annuity Account (''American Enterprise Life Account'') and ACL Variable Annuity Account 2 (''American Centurion Life Account'') (each, an ''Account'' and collectively, the ''Accounts'') (collectively, the ''Applicants'').

Summary of Application: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the recapture of certain credits applied to contributions made under: (i) Certain additional, amended deferred variable annuity contracts, described herein, that IDS Life proposes to issue through the IDS Life Account (the contracts, including certain data pages and endorsements, are collectively referred to herein as the ''Amended Contracts''), and (ii) certain additional, amended

contracts that the Insurance Companies may in the future issue through the Accounts or any Future Account that are substantially similar in all material respects to the Amended Contracts described in the application (''Future Amended Contracts'') (Amended Contracts and Future Amended Contracts are collectively referred to herein as the ''New Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as distributor or principal underwriter of the New Contracts offered through the Accounts or any Future Account (collectively, the ''Affiliated Broker-Dealers'').

Filing Date: The application was filed on September 24, 2003 and amended and restated on December 23, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 on February 17, 2004 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Mary Ellyn Minenko, Vice President and Group Counsel, American Express Financial Advisors Inc., 50607 AXP Financial Center, Minneapolis, MN 55474.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. On January 19, 2000 the Commission issued an order exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder (the ''Existing Order''). The Existing Order permits, under specified circumstances, as described in the application for the Existing Order (the ''Prior Application''), the recapture of certain Credits applied to contributions made under: (i) Certain deferred variable annuity contracts that IDS Life and American Enterprise Life issued through the Accounts (the contracts, including certain data pages and endorsements, were referred to therein as the ''Contracts''), and (ii) contracts that are substantially similar in all material respects to the Contracts that the Insurance Companies may issue in the future (referred to therein as the ''Future Contracts'') (Contracts and Future Contracts are collectively referred to herein as the ''Existing Contracts'') through the Accounts or any other separate account of the Insurance Companies currently existing or established in the future by the Insurance Companies (the ''Future Accounts'').

2. The Existing Order permits the recapture of Credits, as defined in the Prior Application, under Existing Contracts. Specifically, the Existing Order permits the recapture of these Credits: (i) If the owner returns the Existing Contract to the Insurance Company for a refund during the free look period; (ii) if the Credits were applied within twelve months preceding the date of death that results in a lump sum death benefit; or (iii) if the Credits were applied within twelve months preceding a request for a surrender due to a Contingent Event, as defined in the Prior Application.

3. IDS Life and American Enterprise Life offered Contracts as described in the Prior Application. The Insurance Companies currently offer contracts that constitute Future Contracts covered by the Existing Order. At the appropriate time after effectiveness of the amended registration statement describing the Amended Contracts, IDS Life will begin offering the Amended Contracts.

4. In view of certain differences in the Amended Contracts from these Existing Contracts, Applicants filed an application to extend the relief under the Existing Order with respect to the recapture of Credits under the New Contracts. This recapture will occur under circumstances substantially similar to those described in the Prior Application as well as under certain additional circumstances.

5. IDS Life proposes to offer two new Amended Contracts, American Express Retirement Advisor Advantage Plus sm Variable Annuity (''RAVA Advantage Plus'') and American Express Retirement Advisor Select Plus sm Variable Annuity (''RAVA Select Plus''). RAVA Advantage Plus and RAVA Select Plus are available as nonqualified annuities for after-tax contributions only, or as qualified annuities under certain retirement plans. RAVA Advantage Plus—Band 3 and RAVA Select Plus—Band 3 are available to current or retired employees of AEFC and their spouses; current or retired American Express financial advisors and their spouses; or individuals who, with IDS Life's approval, invest an initial purchase payment of $1,000,000 or more (collectively, the ''Band 3 Contracts''). These Amended Contracts reflect certain differences from the IDS Life Account Existing Contracts. The primary differences between the IDS Life Account Existing Contracts and the Amended Contracts are as follows:

a. Purchase Payments

Under the Existing Contracts, the owner may allocate initial and subsequent additional payments (''Purchase Payments'') to the subaccounts or fixed account in even 1% increments. Under the Amended Contracts, the Owner may allocate Purchase Payments to the subaccounts, fixed account and/or special dollar-cost averaging account in even 1% increments. IDS Life reserves the right to not accept Purchase Payments allocated to the fixed account for twelve months following either: a partial surrender from the fixed account; or a lump sum transfer from the fixed account to a subaccount.

b. Credits

Under the Existing Contracts, the Credits are 1% of each Purchase Payment received if the owner selected the ten-year contingent deferred sales charge (''CDSC'') schedule and the initial Purchase Payment is under $100,000 or if the owner selected the seven-year CDSC schedule and the initial Purchase Payment is at least $100,000; 2% of each Purchase Payment received if the owner selected the ten-year CDSC schedule and the initial Purchase Payment is at least $100,000. For RAVA Advantage Plus, the Credits are 1% of each Purchase Payment received if the owner selected the ten-year CDSC schedule and the initial Purchase Payment is under $100,000 or if the owner selected the seven-year

CDSC schedule and the initial Purchase Payment is at least $100,000 but less than $1,000,000; 2% of each Purchase Payment received if the owner selected the ten-year CDSC schedule and the initial Purchase Payment is at least $100,000 but less than $1,000,000. For RAVA Advantage Plus—Band 3 Contracts, the Credits are 2% of each Purchase Payment received if the owner selected the seven-year CDSC schedule; 3% of each Purchase Payment received if the owner selected the ten-year CDSC schedule. For RAVA Select Plus, the Credits are 1% of each Purchase Payment received in the first contract year if the initial Purchase Payment is at least $250,000 but less than $1,000,000. For RAVA Select Plus—Band 3 Contracts, the Credits are 2% of each Purchase Payment received in the first contract year.

c. Recapture of Credits

Under the Existing Contracts, IDS Life may recapture Credits if: (i) The owner returns the Existing Contract during the free look period which is the period during which an owner may return an Existing Contract after it has been delivered and receive a full refund of the contract value, less the amount of any Credits; (ii) credits were applied within twelve months preceding the date of death that results in a lump sum death benefit; or (iii) credits were applied within twelve months preceding a request for surrender due to the following Contingent Events where no CDSC is incurred: (a) Owner's or annuitant's confinement to a nursing home when IDS Life waives surrender charges that normally are assessed upon a full or partial surrender if the owner provides satisfactory proof that, as of the date of the surrender request, the owner or annuitant is confined to a nursing home or hospital and has been for the prior 90 days, and the confinement began after the contract date; (b) terminal illness when IDS Life would waive surrender charges that normally are assessed upon a full or partial surrender if the owner or annuitant is diagnosed, in the second or later contract years, as disabled with a medical condition that with reasonable medical certainty will result in death within twelve months or less from the date of a licensed physician's statement; (c) disability when IDS Life would waive surrender charges that normally are assessed upon a full or partial surrender if the owner or annuitant becomes disabled, within the meaning of the Internal Revenue Code Section 72(m)(7), after the contract date; or (d) unemployment when IDS Life would waive surrender charges that normally are assessed upon a full or partial surrender if the owner or annuitant becomes unemployed at least one year after the contract date.

Under the Amended Contracts, IDS Life proposes to recapture Credits if: (i) The owner returns the Amended Contract during the free look period which is the period during which an owner may return an Amended Contract after it has been delivered and receive a full refund of the contract value, less the amount of any Credits; (ii) credits were applied within twelve months preceding the date of death that results in a lump sum death benefit; (iii) credits were applied within twelve months preceding settlement under an annuity payout plan; or (iv) credits were applied within twelve months preceding a request for surrender due to either of the following Contingent Events where no CDSC is incurred: (a) Owner or owner's spouse's confinement to a nursing home when IDS Life waives surrender charges that normally are assessed upon a full or partial surrender if the owner provides satisfactory proof that, as of the date of the surrender request, the owner or owner's spouse is confined to a nursing home or hospital and has been for the prior 60 days, and the confinement began after the contract date or (b) terminal illness when IDS Life would waive surrender charges that normally are assessed upon a full or partial surrender if the owner is diagnosed, in the second or later contract years, as disabled with a medical condition that with reasonable medical certainty will result in death within twelve months or less from the date of a licensed physician's statement.

With respect to settlement of the Amended Contracts under an annuity payout plan, to the extent the settlement amount includes Credits applied within twelve months preceding the settlement under an annuity payout plan, IDS Life proposes to assess a charge, similar to a surrender charge, equal to the amount of the Credits. Under the current Amended Contracts, the settlement amount available to the owner to purchase payouts under an annuity payout plan is the full contract value on the settlement date (less any applicable premium tax). IDS Life respectfully requests that the exemptive relief for recapture of certain Credits upon settlement under an annuity payout plan be extended to include Future Amended Contracts that may permit partial settlement under an annuity payout plan in addition to full settlement under an annuity payout plan as provided for in the current Amended Contracts.

d. Investment Funds

The Existing Contracts have between 47 and 56 Investment Funds from 21 fund families (depending on the Existing Contract) to which owners may allocate their contract values. The Amended Contracts have 54 Investment Funds from 18 fund families.

e. CDSC Schedules

The Existing Contracts have the following CDSC Schedules:

[Contingent deferred sales load as a percentage of purchase payment surrendered]

Seven-year schedule		Ten-year schedule	
Number of completed years from date of each purchase payment	Surrender charge percentage	Number of completed years from date of each purchase payment	Surrender charge percentage
0	7	0	8
1	7	1	8
2	7	2	8
3	6	3	7
4	5	4	7
5	4	5	6
6	2	6	5
7+	0	7	4
		8	3

[Contingent deferred sales load as a percentage of purchase payment surrendered]

Seven-year schedule		Ten-year schedule	
Number of completed years from date of each purchase payment	Surrender charge percentage	Number of completed years from date of each purchase payment	Surrender charge percentage
		9	2
		10+	0

Under the Amended Contracts, the RAVA Advantage Plus Contracts have the same seven-year and ten-year CDSC schedules as the Existing Contracts noted above.

The RAVA Select Plus Contracts have the following CDSC schedules:

CDSC SCHEDULE FOR RAVA SELECT PLUS (EXCEPT TEXAS)

[Contingent deferred sales load as a percentage of purchase payment surrendered]

Years from contract date	Surrender charge percentage
1	7
2	7
3	7
Thereafter	0

CDSC SCHEDULE FOR RAVA SELECT PLUS IN TEXAS

[Contingent deferred sales load]

	1	2	3	Thereafter
Payments made in contract year	Surrender charge percentage (as a percentage of purchase payments surrendered in contract year)			
1	8%	7%	6%	0%
2	.....	8	7	0
3	.....	.....	8	0
Thereafter	.....	.....	.....	0

f. Transfers

Under both the Existing Contracts and the Amended Contracts, the owner may transfer contract values between the subaccounts, or from the subaccounts to the fixed account at any time. Certain restrictions apply with respect to the timing of transfers from the fixed account. However, under the Amended Contracts, IDS Life reserves the right to limit transfers to the fixed account if the current interest crediting rate is equal to the minimum interest rate stated in the Amended Contract. Currently transfers out of the fixed account are limited to the greater of 30% of the fixed account value at the beginning of the contract year or the amount transferred out of the fixed account in the previous contract year, excluding automated transfers.

g. All Standard and Optional Death Benefits

Under the Existing Contracts, payment to the beneficiary occurs upon the earlier of the owner or annuitant's death and benefits are based on the age of both the owner and annuitant. Under the Amended Contracts, payment to the beneficiary occurs upon the owner's death and benefits are based on the age of the owner.

h. Standard Death Benefit

Under the Existing Contracts, if the owner and annuitant are age 80 or younger on the date of death, the death benefit is the greatest of: the contract value; the contract value as of the most recent sixth contract anniversary plus subsequent Purchase Payments less adjusted partial surrenders; or Purchase Payments less adjusted partial surrenders. If the owner or annuitant is age 81 or older on the date of death, the death benefit is the greatest of: the contract value; or Purchase Payments less adjusted partial surrenders. Under the Amended Contracts, if the owner is age 75 or younger at contract issue, the death benefit is the greater of: the contract value, less Credits subject to recapture and less a pro-rata portion of any rider fees; or Purchase Payments less adjusted partial surrenders. If the owner is age 76 or older at contract issue, the death benefit is the contract value less Credits subject to recapture and less a pro-rata portion of any rider fees.

i. Optional Return of Purchase Payment (''ROPP'') Death Benefit

The ROPP Death Benefit is not available under the Existing Contracts. Under the Amended Contracts, the ROPP Death Benefit is available (in approved states) if the owner is age 76 or older at contract issue. The ROPP Death Benefit is included in the standard death benefit if the owner is age 75 or younger at contract issue at no additional cost. The ROPP Death Benefit states that, upon the owner's death, before annuity payouts begin and while the Amended Contract is in force, IDS Life will pay the designated beneficiary the greater of: (i) The contract value, less

Credits subject to recapture and less a pro-rata portion of any rider fees; or (ii) Purchase Payments minus adjusted partial surrenders. The current cost of the ROPP Death Benefit is 0.20%. IDS Life reserves the right to increase the cost after the tenth rider anniversary to a maximum of 0.30%.

j. Optional Maximum Anniversary Value (''MAV'') Death Benefit

The optional MAV death benefit is available under both the Existing and the Amended Contracts. Under the Existing Contracts, the MAV Death Benefit is available (in approved states) if both the owner and annuitant are age 75 or younger at contract issue. The MAV death Benefit states that, upon the earlier of the owner or annuitant's death, before annuity payouts begin and while the Existing Contract is in force, IDS Life will pay the designated beneficiary the MAV. On the first contract anniversary, IDS Life sets the MAV equal to the highest of the (i) current contract value; or (ii) total Purchase Payments minus adjusted partial surrenders. Every contract anniversary after that, through the earlier of the owner's or annuitant's age 80, IDS Life compares the previous anniversary's MAV plus subsequent Purchase Payments less subsequent adjusted partial surrenders to the current contract value and resets the MAV to the higher of these values. IDS Life stops resetting the MAV after the owner or annuitant reaches age 81. However, IDS Life continues to add subsequent Purchase Payments and subtract adjusted partial surrenders from the MAV. The current cost of the optional MAV Death Benefit under the Existing Contracts is 0.25% (0.15% for Existing Contracts purchased prior to May 1, 2003). IDS Life reserves the right to increase this cost on new Existing Contracts up to a maximum of 0.45%.

Under the Amended Contracts, the MAV Death Benefit is available (in approved states) if the owner is age 75 or younger at contract issue. On the first contract anniversary after the rider effective date, IDS Life sets the MAV equal to the highest of the (i) current contract value; or (ii) total Purchase Payments minus adjusted partial surrenders. Every contract anniversary after that through age 80, IDS Life compares the previous anniversary's MAV plus subsequent Purchase Payments less subsequent adjusted partial surrenders to the current contract value and resets the MAV to the higher of these values. IDS Life stops resetting the MAV after the owner reaches age 81. However, IDS Life continues to add subsequent Purchase Payments and subtract adjusted partial surrenders from the MAV. The MAV Death Benefit states that, upon the owner's death, before annuity payouts begin and while the Amended Contract is in force, IDS Life will pay the designated beneficiary the greatest of (i) contract value, less Credits subject to recapture and less a pro-rata portion of any rider fees; (ii) Purchase Payments minus adjusted partial surrenders; or (iii) the MAV value as calculated on the most recent contract anniversary plus subsequent Purchase Payments made to the Amended Contract and minus adjustments for partial surrenders since that contract anniversary. The current cost of the optional MAV death benefit under the Amended Contracts is 0.25%. IDS Life reserves the right to increase this cost after the tenth rider anniversary to a maximum of 0.35%. A fee discount of 0.10% applies if the owner purchases the MAV Death Benefit with either the EEB or EEP.

k. Optional Maximum Five-Year Anniversary Value (''5-Year MAV'') Death Benefit

The Amended Contracts also contain a new optional benefit that currently is not available under the Existing Contracts. The 5-Year MAV Death Benefit is available (in approved states) if the owner is age 75 or younger at contract issue. On the fifth contract anniversary after the rider effective date, IDS Life sets the MAV equal to the highest of the (i) current contract value; or (ii) total Purchase Payments minus adjusted partial surrenders. Every fifth contract anniversary after that through age 80, IDS Life compares the previous 5-Year anniversary's MAV plus subsequent Purchase Payments less subsequent adjusted partial surrenders to the current contract value and resets the MAV to the higher of these values. IDS Life stops resetting the MAV after the owner reaches age 81. However, IDS Life continues to add subsequent Purchase Payments and subtract adjusted partial surrenders from the MAV. The 5-Year MAV Death Benefit states that, upon the owner's death, before annuity payouts begin and while the Amended Contract is in force, IDS Life will pay the designated beneficiary the greatest of (i) contract value, less Credits subject to recapture and less a pro-rata portion of any rider fees; or (ii) Purchase Payments minus adjusted partial surrenders; or (iii) the MAV as calculated on the most recent fifth contract anniversary plus subsequent Purchase Payments made to the Amended Contract minus adjustments for partial surrenders since that contract anniversary. The current cost of the 5-Year MAV Death Benefit is 0.10%. IDS Life reserves the right to increase this cost after the tenth rider anniversary to a maximum of 0.20%. A fee discount of 0.05% applies if the owner purchases the 5-Year MAV Death Benefit with either the EEB or EEP.

l. Optional Enhanced Earnings Death Benefit (''EEB'')

The optional EEB is available under both the Existing Contracts and the Amended Contracts. Under the Existing Contracts, the EEB is available (in approved states) if both the owner and annuitant are age 75 or younger at the rider effective date. The EEB states that, upon the earlier of the owner's or annuitant's death, after the first contract anniversary but before annuity payouts begin and while the Existing Contract is in force, IDS Life will pay the designated beneficiary the standard death benefit or the MAV Death Benefit, if applicable, plus: (i) 40% of earnings at death if the owner and the annuitant were under age 70 on the rider effective date, up to a maximum of 100% of Purchase Payments not previously surrendered that are one or more years old; or (ii) 15% of earnings at death if the owner or the annuitant were age 70 to 75 on the rider effective date, up to a maximum of 37.5% of Purchase Payments not previously surrendered that are one or more years old. The current cost of the EEB under the Existing Contracts is 0.30%. IDS Life reserves the right to increase this cost on new Existing Contracts up to a maximum of 0.90%.

Under the Amended Contracts, the EEB is available (in approved states) if the owner is age 75 or younger at the rider effective date. The EEB states that, upon the owner's death, after the first contract anniversary but before annuity payouts begin and while the Amended Contract is in force, IDS Life will pay the designated beneficiary the standard death benefit or the MAV Death Benefit, if applicable, or 5-Year MAV Death Benefit, if applicable, plus: (i) 40% of earnings at death if the owner was under age 70 on the rider effective date, up to a maximum of 100% of Purchase Payments not previously surrendered that are one or more years old; or (ii) 15% of earnings at death if the owner was age 70 to 75 on the rider effective date, up to a maximum of 37.5% of Purchase Payments not previously surrendered that are one or more years old. The current cost of the EEB under the Amended Contracts is 0.30%. IDS Life reserves the right to increase this cost after the tenth rider anniversary to a maximum of 0.40%. A fee discount of 0.10% applies if the owner purchases

the MAV Death Benefit with the EEB and a fee discount of 0.05% applies if the owner purchases the 5-Year MAV Death Benefit with the EEB.

m. Optional Enhanced Earnings Plus Death Benefit (''EEP'')

The optional EEP is available under both the Existing Contracts and the Amended Contracts. Under the Existing Contracts, the EEP is available (in approved states) if both the owner and annuitant are age 75 or younger at contract issue. The EEP is available only under Existing Contracts purchased through an exchange. The EEP states that, upon the earlier of the owner's or annuitant's death, after the first contract anniversary but before annuity payouts begin and while this Existing Contract is in force, IDS Life will pay the designated beneficiary: (i) EEP Part I benefits, which equal the benefits payable under the EEB described above; plus (ii) EEP Part II benefits, which equal a percentage of exchanged Purchase Payments identified at issue and not previously surrendered as follows:

Contract year	Percentage if owner and annuitant are under age 70 on the rider effective date	Percentage if owner or annuitant are age 70–75 on the rider effective date
One and Two	0	0
Three and Four	10	3.75
Five or more	20	7.5

Additional death benefits payable under the EEP are not included in the adjusted partial surrender calculation. The current cost of the EEP under the Existing Contracts is 0.40%. IDS Life reserves the right to increase this cost on new Existing Contracts up to a maximum of 1.25%.

Under the Amended Contracts, the EEP is available (in approved states) if the owner is age 75 or younger at contract issue. The EEP states that, upon the owner's death, after the first contract anniversary but before annuity payouts begin and while the Amended Contract is in force, IDS Life will pay the designated beneficiary: (i) EEP Part I benefits, which equal the benefits payable under the EEB described above; plus (ii) EEP Part II benefits, which equal a percentage of exchanged Purchase Payments identified at issue and not previously surrendered as follows:

Contract year	Percentage if owner is under age 70 on the rider effective date	Percentage if owner is age 70–75 on the rider effective date
One and Two	0	0
Three and Four	10	3.75
Five or more	20	7.5

Additional death benefits payable under the EEP are not included in the adjusted partial surrender calculation. The current cost of the EEP under the Amended Contracts is 0.40%. IDS Life reserves the right to increase this cost after the tenth rider anniversary to a maximum of 0.50% A fee discount of 0.10% applies if the owner purchases the MAV Death Benefit with the EEP and a fee discount of 0.05% applies if the owner purchases the 5-Year MAV Death Benefit with the EEP.

n. Other Charges

The Existing Contracts contain the following additional charges: (i) A mortality and expense risk fee of 0.95% for nonqualified annuities and 0.75% for qualified annuities; (ii) a $30 annual contract administrative charge that IDS Life waives when the contract value, or total Purchase Payments less any Purchase Payments surrendered, is $50,000 or more on the current contract anniversary, except at full surrender; and (iii) a premium tax charge of up to 3.5% depending on the owner's state of residence or the state in which the Existing Contract was sold. In addition, assets invested in Investment Funds are charged with the annual operating expenses of those Funds.

The Amended Contracts contain the following additional charges: (i) A mortality and expense risk fee for RAVA Advantage Plus of 0.95% for nonqualified annuities, 0.75% for qualified annuities and 0.55% for Band 3 Contracts and a mortality and expense risk fee for RAVA Select Plus of 1.20% for nonqualified annuities, 1.00% for qualified annuities and 0.75% for Band 3 Contracts; (ii) a current $30 annual contract administrative charge (which IDS Life reserves the right to increase after the first contract anniversary to a maximum of $50) that IDS Life waives when the contract value, or total Purchase Payments less any Purchase Payments surrendered, is $50,000 or more on the current contract anniversary, except at full surrender; and (iii) a premium tax charge of up to 3.5% depending on the owner's state of residence or the state in which the Amended Contract was sold. In addition, assets invested in Investment Funds are charged with the annual operating expenses of those Funds.

o. Other Contract Features

The Existing Contracts and the Amended Contracts provide for the same surrender options, annuity payout options, dollar-cost averaging program and asset-rebalancing program. In addition, the Amended Contracts provide for a special dollar-cost averaging program. The Insurance Companies reserve the right to add new Contract features, including asset allocation programs, to Future Contracts and/or Future Amended Contracts.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the Insurance Companies to recapture certain Credits under substantially the same circumstances described in the Prior Application as well as certain additional circumstances, specifically: (i) Any Credits applied when an owner returns a New Contract to an Insurance Company for a refund during the free look period; (ii) Credits applied within twelve months preceding the date of death that results in a lump sum death benefit (including death benefits under optional death benefit riders); (iii) Credits applied within twelve months preceding a request for a surrender charge waiver due to Contingent Events described in the New Contracts; and (iv) Credits applied within twelve months preceding the owner's full settlement of the Amended Contract or full or partial settlement of a Future Amended Contract under an annuity payout plan. The amount an Insurance Company pays under these circumstances will always equal or exceed the surrender value.

3. Applicants represent that it is not administratively feasible to track the Credit amount in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Credit amount, during the free look period and the twelve-month recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's contract value will be higher than those that would be charged if the owner's contract value did not include the Credit.

4. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the recapture of the Credit amount in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in the Credit amount allocated to his or her contract value upon receipt of an initial Purchase Payment is not vested until the applicable free look period has expired without return of the New Contract. Similarly, an owner's interest in the Credit amounts allocated to his or her New Contract within twelve months preceding a Contingent Event or settlement under an annuity payout plan also is not vested. Applicants submit that until the right to recapture has expired and any Credit amount is vested, the Insurance Companies retain the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, when the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets because his or her interest in the Credit amount has not vested.

6. In addition, Applicants believe that permitting an owner to retain a Credit amount under a New Contract upon the exercise of the free look period would not only be unfair, but also would encourage individuals to purchase a New Contract with no intention of keeping it and returning it for a quick profit. Applicants submit that the recapture of Credit amounts within twelve months preceding a Contingent Event and within twelve months of settlement under an annuity payout plan is designed to provide the Insurance Companies with a measure of protection against anti-selection. The anti-selection risk is that an owner can collect a Credit shortly before death, a Contingent Event or settlement under an annuity payout plan thereby leaving the Insurance Companies little time to recover the cost of the Credit. As noted earlier, the amounts recaptured equal the Credits provided by the Insurance Companies from their general account assets, and any gain would remain a part of the owner's contract value. In addition, the amount the owner receives in any of the circumstances where Credits are recaptured will always equal or exceed the surrender value of the New Contract.

7. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the Amended Contracts does not, and any Future Amended Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 (''NSMIA''), which is to amend the Act to ''provide more effective and less burdensome regulation.'' Sections 26(e) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. To avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in the application with respect to New Contracts, without the loss of relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. Applicants represent that the Insurance Companies' recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate Section 22(c) and Rule 22c–1.

10. Applicants submit that the recapture of the Credit does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or

redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares.

11. Applicants submit that the proposed recapture of the Credit does not pose such a threat of dilution. To effect a recapture of a Credit, the Insurance Companies will redeem interests in an owner's account at a price determined on the basis of the current net asset value of that account. The amount recaptured will equal the amount of the Credit that the Insurance Companies paid out of their general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current net asset value of the Account. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit.

12. Applicants submit that because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 and Section 22(c) should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the New Contracts.

13. Applicants request an amended order pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the Insurance Companies to issue the New Contracts, allowing the Insurance Companies to offer and, where applicable, to recapture any Credits as described herein. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 103% of their Purchase Payments to work for them in the selected Investment Funds. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal Credit amount once vested after the twelve-month recapture period.

14. Applicants further submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Insurance Companies. In the context of the Contingent Events described in the Prior Application or Contingent Events or settlement under an annuity payout plan described in the application, anti-selection can generally be described as a risk that New Contract owners obtain an undue advantage based on elements of fairness to the Insurance Companies and the actuarial and other factors they take into account in designing the New Contracts. Applicants submit that there is no difference in the risk of anti-selection arising from settlement under an annuity payout plan as described in the application and the risk of anti-selection discussed in the Prior Application with respect to Contingent Events. The Insurance Companies provide the Credits from their general account on a guaranteed basis. Thus, the Insurance Companies undertake a financial obligation that contemplates the retention of the New Contracts by their owners for at least the duration of the CDSC period. The Insurance Companies generally expect to recover their costs, including Credits, over an anticipated duration while a New Contract is in force. The right to recapture Credits applied to Purchase Payments made within twelve months preceding settlement under an annuity payout plan protects the Insurance Companies against the risk that an owner will make additional Purchase Payments or purchase a New Contract with the knowledge that he or she is about to settle the New Contract under an annuity payout plan.

15. Applicants represent that with respect to refunds paid upon the return of the New Contracts within the free look period, the amount payable by the Insurance Companies must be reduced by the Credit amount. Otherwise, purchasers could apply for New Contracts for the sole purpose of exercising the free look provision and making a quick profit.

Conclusion

Applicants submit that their request for an amended order that applies to the Accounts or any other Future Accounts established by the Insurance Companies in connection with the issuance of Amended Contracts and Future Amended Contracts that are substantially similar in all material respects to the Amended Contracts described herein (including the Contingent Events and settlement under an annuity payout plan described in the application), and underwritten or distributed by IDS Life, AEFA, or Affiliated Broker-Dealers is appropriate in the public interest. Such an amended order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby.

Applicants undertake that Future Amended Contracts funded by the Accounts, or by Future Accounts, which seek to rely on the amended order will be substantially similar in all material respects to the Amended Contracts.

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons stated herein, that their exemptive requests meet the standards set out in Section 6(c) and that an amended order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1919 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10645]

Issuer Delisting; Notice of Application of Michael Anthony Jewelers, Inc. To Withdraw Its Common Stock, $.001 Par Value, From Listing and Registration on the American Stock Exchange LLC

January 23, 2004.

Michael Anthony Jewelers, Inc., a Delaware corporation (''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 Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors of the Issuer unanimously approved a resolution on January 12, 2004 to withdraw the Issuer's Security from listing on the Amex. The Issuer states that the following primary reasons factored into its decision to withdraw the Security: (i) The dramatically increasing costs, both direct and indirect, associated with the preparation and filing of the Issuer's periodic reports with the Commission; (ii) the expected substantial increase in costs associated with being a public company in light of the new regulations promulgated as a result of the Sarbanes-Oxley Act of 2002; (iii) the Issuer has fewer than 300 registered stockholders and is, therefore, eligible to suspend its reporting obligations with the Commission; (iv) the lack of analyst coverage and minimal liquidity in trading of the Security; and (v) the benefits to the Issuer and its stockholders in maintaining its listing and registration are outweighed by the costs of maintaining such listing and registration.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 17, 2004, 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 Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–10645. 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.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–1889 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

[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).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–02521]

Issuer Delisting; Notice of Application of Washington Mutual Finance Corporation to Withdraw its 6.875% Senior Notes (due May 15, 2011) from Listing and Registration on the New York Stock Exchange, Inc.

January 23, 2004.

Washington Mutual Finance Corporation, a Delaware corporation (''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 6.875% Senior Notes (due May 15, 2011) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on January 21, 2004 to withdraw the Issuer's Security from listing on the NYSE. The Board stated that the following reasons factored into its decision to withdraw the Issuer's Security from the Exchange: (i) The Security has a limited number of registered holders (as of January 6, 2004, the Issuer had fewer than 300 holders of record); (ii) the Issuer's Security trades infrequently on the NYSE and the Issuer does not anticipate that such trading volume might increase appreciably; (iii) the costs associated with the continued listing of the Security are disproportionately high, given the limited trading volume; (iv) the Issuer is not obligated by the terms of the indenture under which the Security was issued or by any other documents to maintain a listing for the Security on the NYSE or any other exchange; (v) the Issuer believes that delisting the Security will not have a material impact on the holders of the Security; (vi) the Security is not listed on any other exchange; and (vii) the Issuer has been informed that a number of underwriters are market makers in the Security.

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]

Any interested person may, on or before February 17, 2004, 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. All comment letters should refer to File No. 1–02521. 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.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–1890 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

[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).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49115; File No. SR–AMEX–2003–114]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Concerning Its Pilot Program Governing Voting Procedures With Respect to Its Marketing Fee Program

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change relating to the voting procedures pilot program for its marketing fee program. On January 5, 2004 the Amex filed Amendment No. 1 to the proposed rule change, which replaces the original filing in its entirety. Amendment No. 1 to the proposed rule change is described in Items I and II below, which the Amex has prepared. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended. The Commission is also approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the number of registered options traders that may be entitled to vote in connection with the marketing fee program as set forth in Commentary .11(a) of Rule 958. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 958. Options Transactions of Registered Traders

(a) through (h) No Change

Commentary

.01 through .10 No Change

.11 Marketing Fee Program Voting Procedures. The following procedures specify how a specialist and Registered Trader determine whether to participate or not to participate in the Exchange's marketing fee program. These procedures will expire six (6) months from the date of effectiveness unless extended, or adopted on a permanent basis.

(a) Eligible Voters

(i) Eligible Registered Traders. For option classes traded by an individual specialist, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in one or more option classes traded by that specialist. For cases when one specialist trades a single option class or multiple specialists trade a single option class, Registered Traders to be eligible to participate in the vote must have transacted at least 80% of their contracts and transactions in each of the three immediately preceding calendar months in that option class. *The calculation of the 80% requirement will include multiple option classes traded by multiple specialists provided: (i) The option classes are located in adjacent trading locations on the trading floor, and (ii) the ROT is continuously and without interruption signed onto Auto-Ex and/or Quick Trade in those particular options classes.* Registered Traders are required to continue to trade the particular option class at the time of the vote. Eligible Registered Traders and the specialist shall each have one vote.

(b) Requesting a Vote. After the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes of an individual specialist, any eligible Registered Trader and specialist can request that a vote be held to determine whether or not the Registered Trader and specialist should continue to participate in the marketing fee program by submitting a written request to that effect to the Secretary of the Exchange. The Exchange shall post a notice of the time and date of any vote to be taken at least 10 calendar days prior to the time of the vote. The Marketing Fee Program Committee shall determine all other administrative procedures pertaining to the vote.

(c) Participation in the Marketing Fee Program. The Registered Traders and specialist shall be deemed to have indicated that they desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are in favor of participating in the marketing fee program. Conversely, the eligible Registered Traders and the specialist shall be deemed to have indicated that they do not desire to participate in the Exchange's marketing fee program if a majority of those eligible Registered Traders participate in the vote and if a majority of the total votes cast are against participating in the marketing fee program.

(i) Frequency of Vote. Once eligible Registered Traders and the specialist vote to participate in the marketing fee program, subsequent votes to determine whether to continue participation may be held only once every three calendar months. Once eligible Registered Traders and the specialist vote not to participate in the marketing fee program, subsequent votes to determine whether to participate in the marketing fee program may be held only once every thirty days.

(ii) Tie Votes. If a vote conducted in accordance with this Commentary results in a tie, the status quo for the specialist and Registered Traders of the particular option class shall remain in effect. Accordingly, if the specialist and Registered Traders currently participate in the marketing fee program and a tie vote occurs, the marketing fee program will remain in effect for that specialist and Registered Traders. If the specialist and Registered Traders do not participate in the marketing fee at the time the tie vote occurs, the marketing fee will not be implemented for the specialist and Registered Traders at that time.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

In June 2003, the Amex reinstated an equity option marketing fee on the transactions of specialists and registered options traders (''ROTs'') involving customer orders from firms that accept payment for directing their orders to the Exchange.[3] On September 30, 2003, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

Exchange adopted new voting procedures, operative on a six-month pilot basis, in connection with its reinstatement of the marketing fee program.[4] The pilot program's voting procedures are set forth in Commentary .11 to Amex Rule 958. These procedures establish the voting eligibility requirements for ROTs and the manner in which ROTs may determine to discontinue their participation in the marketing fee program.

Currently, the Amex's marketing fee is assessed only on those specialist and ROT transactions resulting from orders from customers of payment accepting firms with whom the specialist has negotiated a payment for order flow arrangement.[5] The pilot program voting procedures provide that after the marketing fee program has been in effect for three consecutive calendar months with respect to those option classes traded by an individual specialist, the specialist and ROTs may determine to discontinue participation in the marketing fee program. To be eligible to vote on discontinuing participation in the marketing fee program in the option classes traded by an individual specialist, a ROT is required to have at least 80% of its registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in one or more of the options traded by that specialist. When one specialist trades a single option class or multiple specialists trade a single option class, to be eligible to vote on whether to continue with the marketing fee program, ROTs must have at least 80% of their registered trader activity in each of the three immediately preceding calendar months (measured in terms of both contract volume and transactions) in that option class.

The Exchange now believes that limiting eligibility to only those option classes traded by one specialist or one option class where multiple specialists trade such option class is overly restrictive and does not serve the interests of the marketing fee program. Although the pilot program voting requirements as originally filed were intended to assure the voting eligibility of only those ROTs that have concentrated their activity in one or more option classes traded by a specialist, the Exchange believes that the voting procedures have been unduly restrictive. The Exchange believes that determining eligibility by looking at one specialist or one option class in the case of multiple specialists, in some circumstances, has prevented otherwise eligible ROTs from voting.

This proposal is intended to increase participation in the voting process for those ROTs that significantly concentrate their trading activity to particular option classes adjacent to each other that may have more than one individual specialist. For the purpose of determining whether option classes are adjacent, the Exchange asserts that trading locations must be directly next to each other.[6] It is not the Exchange's intention in this rule filing to provide those ROTs with insignificant trading activity in an option class or classes with the opportunity to vote against the marketing fee.

Accordingly, the Amex proposes that for purposes of determining ROT voter eligibility, the calculation of a ROT's 80% requirement would be expanded in the limited circumstances described below. First, the option classes must be in adjacent trading locations on the trading floor. Second, the ROT must be continuously signed on to Auto-Ex and/or Quick Trade in those particular options classes.[7] In order to vote, a ROT would still be required to meet the 80% contract volume and transaction requirement; however, the 80% requirement would be calculated based on the total trading activity of the ROT in multiple option classes. The Exchange believes that this would serve to increase ROT participation in the voting process to the benefit of the marketing fee program and the Exchange.

2. Statutory Basis

The Amex believes that the rule change is consistent with Section 6 of the Act,[8] particularly Section 6(b)(5) of the Act.[9] The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-AMEX–2003–114, and this file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments may be sent in hard copy or by e-mail, but not by both methods. 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 No. SR-AMEX–2003–114 and should be submitted by February 19, 2004.

[4] *See* Securities Exchange Act Release No. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003) (SR–Amex–2003–80).

[5] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[6] For example, trading location 1 in the Western Row of Post 1 is adjacent to trading location 2 in the Western Row of Post 1. In addition, trading location 1 in the Western Row of Post 1 would also be adjacent to trading location 8 in the Western Row of Post 2 and trading location 7 in the Eastern Row of Post 12. However, trading locations 3 through 7 in the Western Row of Post 1 as well as trading location 1 in the Eastern Row of Post 13 would not be adjacent to trading location 1 in the Western Row of Post 1 (*i.e.*, to be adjacent, the trading locations must be directly next to each other).

[7] The period in which the ROT must be continuously signed on coincides with the three-month period used to determine whether the ROTs have at least 80% of their registered trader activity in that option class. Conversation between Jeff Burns, Associate General Counsel, Amex, and Elizabeth MacDonald, Attorney, Division of Market Regulation, Commission, January 12, 2004.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change as amended is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[10] The Commission believes that the proposed changes to the voting procedures pilot program would not significantly affect the protection of investors or the public interest, and would not impose any significant burden on competition.

The Amex has requested accelerated approval of its proposal to amend the marketing fee program voting procedures set forth in its six-month pilot program, which is due to expire as of March 30, 2004. According to the Amex, the proposal raises no novel issues and would merely expand ROT voter eligibility in connection with the Exchange's marketing fee program. Based upon the Amex's representations, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[11] to approve the proposed rule change as amended as a pilot program prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the proposed change to the marketing fee program voting procedures, as set forth in Commentary .11(a)(i) of Amex Rule 958, would help to provide greater access to and participation in the voting process for ROTs that have significant trading activity in those option classes that are subject to the marketing fee, and that are traded by multiple specialists in adjacent trading locations. The Exchange has tailored the proposal to provide specific criteria for determining eligibility to participate in the marketing fee program vote when multiple option classes are traded by multiple specialists. Accordingly, the Commission is approving, on an accelerated basis, the proposed change to the marketing fee program voting procedures on a pilot basis to expire on March 30, 2004.[12]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change as amended to Commentary .11(a)(i) to Amex Rule 958 (SR-AMEX–2003–114) is hereby approved on an accelerated basis as a pilot program to expire on March 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1917 Filed 1–28–04; 8:45 am]

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[10] 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49116; File No. SR–Amex–2003–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Listing and Delisting Appeal Hearing Fees

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange LLC (''Amex'' or ''Exchange'') proposes to amend Sections 1203, 1204 and 1205 of the Exchange's *Company Guide* to increase the fees applicable to issuers requesting review of a determination to limit or prohibit the initial or continued listing of their securities. The text of the proposed rule change is available at the Amex 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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Part 12 of the Amex *Company Guide* provides that issuers may request a written or oral review of a determination by the Listing Qualifications Staff to limit or prohibit the initial or continued listing of their securities before a Listing Qualifications Panel (''Panel'') comprised of at least two, but generally three, members of the Amex Committee on Securities (''Committee''). The fee for a written review is $1,500, and the fee for an oral hearing is $2,500. Issuers may also request a review of a Panel decision by the Committee. The fee for such a review, which is conducted on the written record unless the Committee determines to hold oral hearings, is $2,500.

The hearing fee structure was adopted in September 2001, and was intended to cover the cost of holding the hearing (*i.e.*, allocated staff and overhead costs as well as fees for court reporters, conference calls and other miscellaneous expenses).[3] Amex management believes that the fees should be increased at this time, because the allocated cost of staff and other resources necessary to prepare for and conduct listing hearings exceeds the current permitted fees, particularly in the case of delisting hearings that are often extremely complicated and contentious. Accordingly, the Amex proposes to increase the fee for Panel hearings to $4,000 for a written hearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44768 (September 6, 2001), 66 FR 47709 (September 13, 2001) (SR–Amex–2001–36).

and $5,000 for an oral hearing, and $5,000 for appeals to the Committee.

In addition, the Amex proposes that, in the case of a delisting hearing, a listed company seeking an appeal of a Staff delisting determination be required to satisfy all outstanding listing fees due to the Exchange before any payment will be credited towards a hearing fee. The Amex believes that, in some cases, listed companies with substantial unpaid listing fee balances have been able to engage in frivolous appeals in order to delay an inevitable delisting. While the appeal process provides an important avenue to seek a review of Staff determinations, the Exchange does not believe it is appropriate for a listed company that is delinquent with respect to its listing fees to be able to access this process. In this connection, the Amex notes that a listed company that appears to be delinquent with respect to fees owed is given many opportunities to question the invoices and past due bills sent, if the company believes that the fees assessed are erroneous. Further, failure to pay listing fees in and of itself subjects the company to delisting pursuant to Section 1003(iv) of the Amex *Company Guide,* and a listed company which is delinquent with respect to its listing fees will have received notice to this effect in connection with the Staff delisting determination. Therefore, the Exchange believes that there are sufficient safeguards in place to prevent a listed company from being unfairly barred from appealing a delisting.[4]

The Amex also proposes that Sections 1203 and 1204 of the Amex *Company Guide* be clarified to specify that appeal requests must be submitted to the Amex Office of General Counsel.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)[6] in that the proposal 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to the File No. SR–Amex–2003–111 and should be submitted by February 19, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1921 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

[4] Furthermore, any company that believes it has been improperly denied a hearing would have the right to appeal such denial to the Securities and Exchange Commission as provided in Section 19(d) of the Act and Rule 19d–3 thereunder. *See* 15 U.S.C. 78s(d); 17 CFR 240.19d–3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49118; File No. SR–CBOE–2003–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Calendar Year 2004 Fees

January 22, 2004.

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 31, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On January 16, 2004, the Exchange submitted Amendment No. 1 to the proposal by facsimile.[3] The proposed rule change, as amended, has been filed by the CBOE as establishing or changing a due, fee, or other charge, pursuant to section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, from Christopher R. Hill, Attorney II, CBOE, dated January 16, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange revised the rule text to clarify the time period that the customer large trade discount pilot plan will be in effect.

19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to make three changes to its fee schedule to commence at the start of calendar year 2004. The text of the proposed rule change is available at the Office of the Secretary, CBOE, 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 CBOE 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 CBOE 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 Exchange proposes the following changes to its fee schedule to commence at the start of calendar year 2004:

Elimination of Fee for Electronic Delivery of Exchange Bulletin

The Exchange Bulletin (''Bulletin'') publishes a variety of news and notifications of interest to Exchange members and market participants. Each member receives one complementary subscription. Currently, non-members, as well as members who wish to receive more than one subscription, are charged $200 annually to have a hard copy subscription mailed to them, and $100 per year to have an electronic copy sent to them by e-mail. These charges help offset the costs incurred by the Exchange to produce and deliver such subscriptions.

The Exchange now proposes to eliminate all charges for e-mail delivery of Bulletin subscriptions, both for non-member subscriptions and additional member subscriptions. The Exchange proposes this change to encourage greater use of electronic delivery, and to pass on to Bulletin subscribers the cost efficiencies that the Exchange is realizing from increased electronic delivery.

Extension of Customer Large Trade Discount Program

In July 2003, as part of its fiscal year 2004 fee changes, the Exchange established a Customer Large Trade Discount pilot program to be in effect through December 2003.[6] The Exchange now proposes to extend this pilot through the end of fiscal year 2004 on June 30, 2004, in order to continue to provide discounts to customers on large trades. The terms of the pilot will remain unchanged.

Elimination of Market Share Incentive Plan

Also in its fiscal year 2004 fee changes, the Exchange extended its Market Share Incentive Plan through December 2003.[7] The Exchange now proposes to discontinue this Plan, in order to allow the Exchange to develop other means to improve CBOE market share in 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. 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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CBOE. All submissions should refer to File No. CBOE–2003–60 and should be submitted by February 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1920 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on January 16, 2004, the date the CBOE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49119; File Nos. SR–NASD–2004–03; SR–NASD–2004–10; SR–NYSE–2004–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating To Establishing Effective Dates for Certain Provisions of NASD Rule 2711 and NASD Rule 1050 and Certain Provisions of NYSE Rule 472 and NYSE Rule 344

January 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2004 and on January 16, 2004, the National Association of Securities Dealers, Inc. (''NASD''), and on January 16, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs'').

The SROs have designated the proposed rule changes as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which renders the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

NASD is filing with the SEC a proposed rule change to establish April 26, 2004 as the effective date for the recently amended provisions of NASD Rule 2711(h)(2) that require certain disclosures by members and research analysts of compensation received by the member or its affiliates from the subject company of a research report or public appearance.

NASD is also filing with the SEC a proposed rule change to establish ''not later than March 30, 2004'' as the effective date for Rule 1050, which requires persons associated with a member who function as research analysts to be registered as such and to pass a qualification examination. The proposal also would ensure that the effective date for Rule 1050 would occur no sooner than 30 days after a study outline for the Research Analyst Qualification Examination is filed by NASD with the Commission and becomes effective.

The NYSE is filing with the SEC a proposed rule change that would change the effective date for certain provisions of Rule 472 (''Communications with the Public'') and Rule 344 (''Research Analysts and Supervisory Analysts'').

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASD and the NYSE 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. NASD and the NYSE 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. NASD's Purpose

NASD is filing the proposed rule change to establish April 26, 2004 as the effective date for the recently amended provisions of NASD Rule 2711(h)(2) that require disclosure of compensation received by the member and its affiliates from the subject company of a research report or public appearance. The SEC approved these amendments to Rule 2711 on July 29, 2003 as part of a proposal that augmented research analyst conflicts of interest rules generally and imposed registration and continuing education requirements on research analysts.[4]

Generally, the amendments to Rule 2711(h)(2) require a member to disclose in a research report (1) non-investment banking compensation received by it or its affiliates from a subject company in the past 12 months and (2) if a subject company is, or during the past 12-month period, was a client of the member and types of client services provided to the subject company. The amendments further require a research analyst to disclose in a public appearance (1) if, to the extent the analyst knows or has reason to know, the member or an affiliate received any compensation in the past 12 months, (2) if the research analyst received any compensation from the subject company in the past 12 months, and (3) if, to the extent the analyst knows or has reason to know, a subject company is, or during the past 12-months period was, a client of the member and types of client services provided to the subject company. These provisions supplement requirements in Rule 2711(h)(2) that require disclosure of investment banking compensation received or sought by a member from a subject company and any compensation received by a research analyst that is based upon a member's investment banking services revenues.

The July Approval Order established a January 26, 2004 as the effective date for the new compensation disclosure provisions, but also provided that NASD may grant an additional 90 days to comply as it deems necessary on a case-by-case basis.[5] Thus, NASD believes that the approval order recognized that additional time might be necessary for some or all members to put systems in place to track various types of compensation and client relationships required to be disclosed under the new provisions.

According to NASD, it has received several requests from members to extend the implementation date of these provisions due to the scope and difficulty required to implement the technology, systems and other changes needed to achieve compliance with the non-investment banking compensation and client disclosure provisions. According to NASD, its members noted the rule requirements necessitate that they build and test new systems and technology feeds to aggregate data across a wide range of business lines within the members. Moreover, in many instances, members must extend that technological infrastructure to global affiliates. According to NASD, members also noted that the timing of the implementation date overlaps with year-end technology ''freezes'' that many firms impose to ensure that systems changes do not impact the accuracy of year-end information gathering related to financial reporting and taxes.

NASD believes these members have demonstrated good cause for an extension of the effective date for the applicable provisions. Moreover, NASD believes the problems cited by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (''July Approval Order'').

[5] Since the 90th day after the current effective date is a Sunday (April 25, 2004), the proposed rule change would establish the compliance date as the following Monday, April 26, 2004.

requesting members are common within the industry and that there should be a uniform effective date for all members. Therefore, NASD is establishing April 26, 2004 as the effective date for the new provisions of Rule 2711(h)(2) for all members. NASD notes that all existing provisions under Rule 2711(h)(2) remain in effect and are not subject to the new effective date.

NASD is also filing the proposed rule change to establish ''not later than March 30, 2004'' as the effective date for Rule 1050, which requires that any person associated with a member who functions as a ''research analyst'' be registered as such and pass a qualification examination. For the purposes of Rule 1050, ''research analyst'' means an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

In the July Approval Order, the SEC approved NASD Rule 1050 on July 29, 2003, together with amendments to NASD Rules 2711 and 1120 that augmented research analyst conflicts of interest rules generally and imposed registration and continuing education requirements on research analysts. The July Approval Order established January 26, 2004, or ''such later date as determined by NASD'' as the effective date for the Rule 1050 registration provision. Thus, NASD believes that the approval order recognized that additional time might be necessary to fully develop the examination and complete the attendant administrative requirements necessary to begin registration and testing.

According to NASD, it has been working diligently with NYSE to develop and implement the qualification examination required by Rule 1050 and NYSE's corresponding Rule 344. As a result, NASD believes that it will shortly file with the Commission the study outline and specifications of the examination. According to NASD, NASD intends to submit to the Commission shortly a proposed rule change that would set forth certain prerequisites and exemptions to the registration and qualification requirements. According to NASD, a fee filing also will follow separately. Therefore, NASD is proposing to establish an effective date of ''not later than March 30, 2004'' for Rule 1050 to allow sufficient time for (1) consideration of, and action on, the aforementioned proposed rule changes by the Commission and (2) members to prepare their research analysts to take the examination after a study outline is filed with the Commission and made effective. In furtherance of the latter, NASD also is proposing that the effective date be set no sooner than 30 days after the Commission acts on a study outline for the Research Analyst Qualification Examination.

2. NASD's Statutory Basis

NASD believes that the proposed rule changes are consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change (SR–NASD–2004–03) will further investor protection by giving members adequate time to establish systems that can effectively track information that will reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts.

NASD also believes that this proposed rule change (SR–NASD–2004–10) will foster greater investor protection by providing adequate time for the development of a comprehensive research analyst competency examination and for members to prepare their research analysts for such examination.

3. NYSE's Purpose

The NYSE is filing the proposed rule change to extend by 90 calendar days the effective date for the recently amended provisions of NYSE Rule 472(k)(1), (2) and (3) (''Disclosure Provisions'') that relate to compensation received by a member and its affiliates from the subject company of a research report or public appearance.[7] In addition, the Exchange is also proposing to establish ''not later than March 30, 2004,'' as the effective date for the recently amended provision of NYSE Rule 344, which requires research analysts to be registered with and qualified by the Exchange.

Background

In the July Approval Order, the Commission approved amendments to Exchange Rule 472 (''Communications with the Public''), Rule 351 (''Reporting Requirements''), Rule 344 (''Supervisory Analysts''), and Rule 345A (''Continuing Education for Registered Persons'').

The Exchange proposed these additional amendments: (1) To enhance the SRO Rules approved in May 2002[8] and (2) to comply with the mandate of the Sarbanes-Oxley Act of 2002 (''SOA'').[9]

Disclosure Provisions

The amendments require a member or member organization to disclose in a research report (1) non-investment banking compensation received by it or its affiliates from the subject company in the past 12 months, and (2) if a subject company is, or during the past 12-month period was, a client of the member or member organization and the types of client services provided to the subject company.

The amendments further require a research analyst to disclose in a public appearance (1) if, to the extent the analyst knows or has reason to know, the member or member organization or its affiliate received any compensation from the subject in the past 12 months, (2) if the research analyst received any compensation from the subject company in the past 12 months, and (3) if, to the extent the analyst knows or has reason to know, if the subject company is, or during the past 12-month period, was a client of the member and the types of client services provided to the subject company. These provisions supplement requirements in Rule 472(k)(1) that require disclosure of investment banking compensation received, sought or expected to be received by a member or member organization or its affiliate from a subject company and any compensation received by a research analyst that is based upon a member's or member organization's investment banking services revenues.

The July Approval Order established a January 26, 2004 implementation date for the Disclosure Provisions, but also provided the Exchange with the discretion to grant, upon written request, an additional 90 days to members and member organizations to comply as it deems necessary on a case-by-case basis. NYSE believes that implicit in the Commission's approval order was the recognition that additional time might be necessary for some or all members to implement systems to track various types of compensation and client relationships required to be disclosed under the new Disclosure Provisions required by the SOA.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] NYSE Rule 472(k)(1)(i)d., (k)(1)(ii)a.1. and b., (k)(1)(iii)a., 472(k)(2)(i)c., (k)(2)(i)f. and the exceptions to these disclosure provisions pursuant to Rule 472(k)(3)(i).

[8] *See* Securities Exchange Act Release No. 45908 (May 10, 2002); 67 FR 34969 (May 16, 2002).

[9] *See* Pub. L. 107–204, 116 Stat. 745 (2002). The SOA amends the Exchange Act by adding new section 15D. *See* 15 U.S.C. 78a *et seq.*; 15 U.S.C. 78*o*-6.

According to NYSE, the Exchange received numerous requests from members and member organizations to extend the implementation date of these provisions due to the scope and difficulty required to implement the technology, systems and other changes needed to achieve compliance with the non-investment banking compensation and client disclosure provisions. Members and member organizations noted that the rule requirements necessitate that they build and test new systems and technology feeds to aggregate data across a wide range of business lines within the members. Moreover, in many instances, members and member organizations must extend that technological infrastructure to global affiliates. In addition, members and member organizations noted that the timing of the implementation date overlaps with year-end technology ''freezes'' that many firms impose to ensure that systems changes do not impact the accuracy of year-end information gathering related to financial reporting and taxes.

The Exchange believes that these members and member organizations have provided sufficient justification for an across-the-board extension of the effective date for the applicable provisions. Moreover, the NYSE believes the problems cited by the requesting members and member organizations are endemic to the industry and that there should be a uniform effective date for all members. Therefore, the Exchange is establishing April 26, 2004[10] as the effective date for the new Disclosure Provisions. Existing provisions under Rule 472(k)(1), (2) and (3) remain in effect and are not subject to the new effective date.

Research Analyst Qualification Examination

As noted above, in the July Approval Order, the SEC approved a new Research Analyst Qualification Examination requirement for Research Analysts primarily responsible for the preparation of the substance of research reports and/or whose names appear on such reports (Rule 344.10). Accordingly, such analysts must pass a qualification examination that was scheduled for implementation on January 26, 2004.

The Exchange is establishing ''not later than March 30, 2004'' as the effective date for the examination. The effective date for the new Research Analyst Qualification examination pursuant to Rule 344 would also not occur sooner than 30 days after the study outline, which NYSE believes it will file with the Commission, becomes effective. The NYSE believes that the extension is necessary to permit the Exchange to make the requisite filings regarding the study outline for the examination, certain pre-requisites to and exemptions from the examination, and fees associated with its administration.

4. NYSE's Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act[11] 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.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NASD and NYSE 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, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The NASD and NYSE have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule changes have been filed by NASD and NYSE as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[12] Consequently, they have become effective pursuant to section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(1) thereunder.[14]

At any time within 60 days of this filing, the Commission may summarily abrogate these proposals 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 Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes 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 may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File Nos. SR–NASD–2004–03, SR–NASD–2004–10, and SR–NYSE–2004–01. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings will also be available for inspection and copying at the principal offices of the NASD and NYSE. All submissions should refer to the file numbers SR–NASD–2004–03, SR–NASD–2004–10, and SR–NYSE–2004–01 and should be submitted by February 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1918 Filed 1–28–04; 8:45 am]

BILLING CODE 8010–01–P

[10] Since 90 days would provide for effectiveness on April 25, 2004 (a Sunday), the actual effective date would be Monday, April 26.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.19b–4(f)(1).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October

1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974;

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Certification of Contents of Document(s) or Record(s)—20 CFR 404.715 Subpart H—0960–NEW. SSA must secure evidence necessary for individuals to establish rights to benefits. Some of the types of evidence needed are evidence of age, relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, state record custodians, and other custodians of evidentiary documents to record information from documents and records to establish these types of evidence. SSA employees use this form but it also is used by state record custodians and other custodians of evidentiary documents.

Type of Request: Form in use without OMB clearance.

Number of Respondents: 4,200.

Average Burden Per Response: 10 minutes.

Frequency of Response: 1.

Estimated Annual Burden: 700.

2. Modified Benefit Formula Questionnaire-Foreign Pension—0960–0561. The information collected on form SSA–308 is used by SSA to determine exactly how much (if any) of the foreign pension may be used to reduce the amount of the Social Security retirement or disability benefit under the modified benefit formula. The respondents are applicants for Social Security retirement/disability benefits.

Type of Request: Extension of OMB-approved information collection.

Number of Responses: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

3. Beneficiary Interview and Auditor's Observations Form—0960–0630. The information collected through the Beneficiary Interview and Auditor's Observation Form, SSA–322, will be used by the SSA Office of the Inspector General (OIG) to interview beneficiaries and/or their representative payees to determine whether the payees are complying with their duties and responsibilities. Respondents to this collection will be randomly selected Supplemental Security Income recipients and Social Security beneficiaries that have representative payees.

Type of Request: Extension of an OMB-approved collection.

Number of Respondents: 2,550.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 638.

4. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information collected on form SSA–3881–BK is used by SSA to evaluate disability in children who are appealing an unfavorable disability decision or whose continuing disability is being reviewed. The form requests the names and addresses of non-medical sources such as schools, counselors, agencies, organizations or therapists who would have information about a child's functioning. The respondents are children or their representatives who are appealing an unfavorable decision on their claim or whose continuing disability is being reviewed.

Type of Request: Extension of OMB-approved collection.

Number of Respondents: 272,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 136,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the addresses listed above.

1. Child Relationship Statement—20 CFR 404.355 and 404.731—0960–0116. SSA uses the information collected on Form SSA–2519 to help determine the entitlement of children to Social Security benefits under section 216(h)(3) of the Social Security Act (Deemed Child Provision). The respondents are persons providing information about the relationship between the worker and his/her alleged biological child, in connection with the child's application for benefits.

Type of Request: Extension of an OMB-approved collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

2. State Mental Institution Policy Review—20 CFR, Subpart U, 404.2001–2065, Subpart F, 416.601–416.665–0960–0110. The Social Security Act provides that the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State that serve as a representative payee for recipients of Social Security and SSI benefits. As part of this accountability process, SSA collects information on Form SSA–9584 to determine whether the institution policies and practices conform to SSA's regulations on the use of benefits and whether the institution is performing other duties and responsibilities required of a representative payee. The information also provides a basis for conducting an onsite review of the institution and is used in the preparation of the subsequent report of findings. The respondents are state mental institutions that serve as representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 125.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 125 hours.

Dated: January 22, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–1929 Filed 1–28–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4594]

Culturally Significant Objects Imported for Exhibition Determinations: ''Vienna: Jews and the City of Music 1870–1938''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Vienna: Jews and the City of Music 1870–1938,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Yeshiva University Museum, New York, NY, from on or about February 3, 2004 until on or about June 30, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 21, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–1930 Filed 1–28–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4595]

Bureau of Educational and Cultural Affairs; Middle East Partnership Initiative (MEPI) Study of the United States Institutes for Undergraduate Student Leaders

ACTION: Request for Grant Proposals (RFGP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations meeting the provisions described in IRS regulation 26 U.S.C. 501(c)(3) to develop and implement one (1) of two ''Middle East Partnership Initiative Study of the United States Institutes for Undergraduate Student Leaders,'' designed for exemplary first and second year undergraduate students from the Middle East and North Africa. Funding for these institutes is being provided by the Department of State's Middle East Partnership Initiative (MEPI). Pending availability of funding and subject to the quality of proposals received, it is the Bureau's intention to award up to two grants for this project for undergraduate student leaders. An organization may only submit one proposal for one assistance award. Please note that the Bureau is also currently publishing a separate RFGP soliciting proposals for one ''Middle East Partnership Initiative Study of the United States Institute for Graduating High School Seniors.'' *Important Note*: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

The ''Middle East Partnership Initiative Study of the United States Institutes for Undergraduate Student Leaders'' are intended to provide groups of 21 highly motivated first and second year undergraduate students from the Middle East and North Africa with a five-week academic seminar and domestic travel component that will give them a deeper understanding of U.S. society, culture, values and institutions, past and present. The grant award will also partially support a follow-on workshop to be held at a site in the Middle East or North Africa. Program participants will be identified and nominated by U.S. embassies and consulates and drawn from the following countries/entities: Algeria; Bahrain; Egypt; Iraq; Israel; Jordan; Kuwait; Lebanon; Morocco; Oman; Qatar; Saudi Arabia; United Arab Emirates; Syria; Tunisia; West Bank/Gaza; Yemen. [Note: Israeli participants will be Arab-Israelis only.

Each program will be five weeks in length and will be conducted during the summer of 2004. The follow-on workshop will be conducted approximately six to twelve months after the U.S.-based program. Grant awards will be for up to two years.

The Bureau is seeking detailed proposals from U.S. colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the program theme.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. U.S. student mentors, if proposed, must be mature and must have some international experience or knowledge of the region. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Applicant institutions must demonstrate expertise in conducting academic programs for foreign students, and must have a minimum of four years experience in conducting international exchange programs. Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

Program Information

Overview and Objectives

The Bureau of Educational and Cultural Affairs' (ECA) ''Study of the United States Institutes'' are academic seminars designed to provide multinational groups of foreign participants with a deeper understanding of U.S. society and institutions. Their ultimate objective is to promote a better appreciation of U.S. culture, values and the American people. The Middle East Partnership Initiative Study of the United States Institutes are specifically designed to

engage future leaders from countries in the Middle East and North Africa.

The institutes for undergraduate student leaders should be five weeks in length and must include an academic residency segment of at least twenty-five (25) days duration that takes place at a U.S. college or university campus (or other appropriate location). A U.S. domestic travel component of not more than ten (10) days, including 3–4 days in Washington, DC, should also be planned. This domestic travel component should directly complement the academic residency segment, and should include visits to cities and sites of interest in the region of the host institution. All institutes must conclude with a 3–4 day program in Washington, DC.

The Bureau will work closely with the grantee organizations and with U.S. embassies abroad to organize an alumni workshop for participants in both MEPI undergraduate student leader institutes. This workshop will take place at a site to be determined in the Middle East/North Africa region within six-twelve months after the conclusion of the institutes.

Institutes should be designed as intensive, academically rigorous seminars intended for a group of highly motivated and exemplary first and second year undergraduate students from the Middle East and North Africa. Each institute should be organized through an integrated series of lectures, readings, seminar discussions, regional travel, and site visits. Each should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content, if appropriate;

2. give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

3. insure access to library and material resources that will enable grantees to continue their studies and conduct research upon returning to their home institutions.

Program Description

Each ''MEPI Study of the United States Institute for Undergraduate Student Leaders'' should provide a group of 21 first and second year undergraduate students from selected countries in the Middle East and North Africa with an integrated and imaginatively designed academic seminar and study visit program that will illuminate the history and evolution of U.S. society, culture, values and institutions, broadly defined. The institute should focus on contemporary American life, including current political, social, and economic issues and debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance should be addressed. The concepts of individual and civic responsibility, volunteerism, community involvement, and environmentalism should also be highlighted. The host institution will also be expected to provide participants post-program opportunities for further investigation and research on the topics and issues examined and discussed during the institute.

Participants

The participants will be highly motivated and exemplary first and second year undergraduate students from colleges, universities and teacher training institutions in Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, the West Bank and Gaza, and Yemen who demonstrate leadership through academic work, community involvement, and extracurricular activities. [**Note:** Israeli participants will be Arab-Israelis only.] Participants will be identified and nominated by U.S. embassies and consulates in those countries, with final selection made by ECA's Study of the U.S. Branch in consultation with the MEPI office. A mix of male and female participants will be included, and a mix of religious and cultural backgrounds represented. All participants will be conversant in English.

This project addresses the MEPI goals of fostering political reform, educational reform and women's empowerment in MEPI partner countries. Program participants are expected to return to their home institutions to contribute to better understanding of U.S. society among their university peers and compatriots. As participants will be selected in large part on the basis of their demonstrated leadership capacity, it is expected they will utilize the experience derived from the program in positions of stewardship in their home countries.

Program Guidelines

While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. A syllabus should be included in the proposal, which indicates the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all program activities must also be included. Additionally, applicant institutions should describe their plans for public and media outreach in connection with the program.

Budget Guidelines

Based on groups of 21 participants, the total Bureau-funded budget (program and administrative) for each program should be approximately $310,000. Justifications for any budget in excess of this amount must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' document in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Middle East Partnership Initiative Study of the United States Institutes for Undergraduate Student Leaders (ECA/A/E/USS–04–07–Benda)

FOR FURTHER INFORMATION CONTACT: To obtain more information about these programs, or to request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, SW., Washington, DC 20547, Attention: Peter Benda.

Telephone number: (202) 619–5893.

Fax number: (202) 619–6790.

Internet address: BendaPM@state.gov.

The Study of the U.S. Branch is available to consult with potential applicants regarding proposal content and preparation up until the proposal submission deadline. Please specify Program Officer Peter Benda on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is March 12, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadline are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: ECA/A/E/USS–04–07-Benda, Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. If possible, please also include on the disk any program calendar or syllabus addendum to the proposal.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW, Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the ECA program office in consultation with the Office of Middle East Partnership Initiative (MEPI). Eligible proposals will then be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed

by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. Overall Quality

Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the debates within the topics being examined in the institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning and Administration

Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. Institutional Capacity

Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. Support for Diversity

Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience

Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign college/university students.

6. Evaluation and Follow-up

A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Cost Effectiveness

Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: January 23, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–1931 Filed 1–28–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4596]

Bureau of Educational and Cultural Affairs; Middle East Partnership Initiative (MEPI) Study of the United States Institute for Graduating High School Seniors; Notice: Request for Grant Proposals (RFGP)

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations meeting the provisions described in IRS regulation 26 U.S.C. 501(C)(3) to develop and implement a ''Middle East Partnership Initiative Study of the United States Institute for Graduating High School Seniors,'' designed for exemplary students from the Middle East and North Africa who will have completed their final year of high school(or equivalent) by summer 2004 and be preparing to commence their undergraduate studies in the fall. Funding for this institute is being provided by the Department of State's Middle East Partnership Initiative (MEPI). Pending availability of funding and subject to the quality of proposals received, it is the Bureau's intention to award one grant for this project. The Bureau is also currently publishing a separate RFGP soliciting proposals for up to two grants for counterpart MEPI-funded institutes targeting first and second year undergraduate student leaders from the Middle East/North Africa. **Important Note:** This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

The ''Middle East Partnership Initiative Study of the United States Institute for Recent High School Graduates'' is intended to provide a group of 21 highly motivated graduating high school seniors from the Middle East and North Africa with a five-week

academic seminar and a limited U.S. regional travel component that will give them a deeper understanding of U.S. society, culture, values and institutions, past and present, while at the same time assisting these young people to further develop their leadership potential and collective problem-solving skills. The grant award will also partially support a follow-on workshop to be held at a site in the Middle East or North Africa. Program participants will be identified and nominated by U.S. embassies and consulates and drawn from the following countries/entities: Algeria; Bahrain; Egypt; Israel; Iraq; Jordan; Kuwait; Lebanon; Morocco; Oman; Qatar; Saudi Arabia; Syria; United Arab Emirates; Syria; Tunisia; West Bank/Gaza; Yemen. [Note: Israeli participants will be Arab-Israelis only.]

The program will be five weeks in length and will be conducted during the summer of 2004. The follow-on workshop will be conducted approximately six to twelve months after the U.S.-based program. The grant award will be for up to two years.

The Bureau is seeking detailed proposals from U.S. colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. U.S. student mentors or facilitators, if engaged to assist in the project implementation, must be mature, knowledgeable about the United States and also have international experience or knowledge of the Middle East/North Africa region. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Applicant institutions must demonstrate expertise in conducting academic programs for foreign students, and must have a minimum of four years experience in conducting international exchange programs. Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

Program Information

Overview and Objectives: The Bureau of Educational and Cultural Affairs' (ECA) ''Study of the United States Institutes'' are academic seminars designed to provide multinational groups of foreign participants with a deeper understanding of U.S. society and institutions. Their ultimate objective is to promote a better appreciation of the people, culture and values of the United States.

The Middle East Partnership Initiative Study of the United States Institute for Graduating High School Seniors should be five weeks in length and must include an academic residency segment of at least twenty-five (25) days duration that takes place at a U.S. college or university campus (or other appropriate location). A domestic travel component of not more than ten (10) days, including 3–4 days in Washington, DC, should also be planned. This travel component should directly complement the academic residency segment. It should include visits to cities and other sites of interest in the region of the host institution. All institutes must conclude with a 3–4 day program in Washington, DC.

The Bureau will work closely with the grantee organization and with U.S. embassies abroad to organize an alumni workshop for participants in this program at a site to be determined in the Middle East/North Africa region within six-twelve months after the conclusion of the institute.

The institute should be designed as an intensive, academically rigorous seminar intended for a group of highly motivated students from the Middle East and North Africa who will have completed their high school studies by the summer of 2004, and who will be commencing undergraduate studies in the fall. The institute curriculum should give roughly equal weight to study of the United States (efforts to promote a deeper understanding of U.S. society, culture, values and institutions, past and present) and to leadership development/teambuilding sessions and exercises. The institute should be organized through an integrated series of lectures, readings, seminar discussions, experiential learning exercises, regional travel, and site visits. It should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content, if appropriate;
2. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,
3. Insure access to library and material resources that will enable grantees to continue their studies and conduct research upon returning to their home institutions.

Program Description: The ''MEPI Study of the United States Institutes for Graduating High School Seniors'' should provide a group of 21 recent high school graduates from selected countries in the Middle East and North Africa with an integrated and imaginatively designed academic seminar and limited U.S. domestic travel component. The principal objective of the institute is to illuminate the history and evolution of U.S. society, culture, values and institutions, broadly defined, so that participants develop an appreciation of the United States. In this context, the institute should focus on contemporary American life, including current political, social, and economic issues and debates. The concepts of individual and civic responsibility, volunteerism and community involvement should be highlighted. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance should be addressed.

In addition to promoting a better understanding of the United States, an important subsidiary objective of the institute is to help develop the participants' leadership and collective problem-solving capacities and skills. In this context, the program should include lectures as well as group

discussions and exercises focusing on such topics as the essential attributes of leadership, developing effective communication and problem-solving skills, and managing change in different organizational settings. The host institutions will also be expected to provide participants post-program opportunities for further investigation and research on the topics and issues examined and discussed during the institute.

Participants: The participants will be highly motivated and exemplary graduating high school seniors or equivalent who have recently completed secondary school in their home country, and who demonstrate leadership through academic work, community involvement, and extracurricular activities. Participants will be preparing to enter university in their home country upon conclusion of the program. The students will be recruited from Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, the West Bank and Gaza, and Yemen [**Note:** Israeli participants will be Arab-Israelis only.] Participants will be identified and nominated by U.S. embassies and consulates in those countries, with final selection made by ECA's Study of the U.S. Branch in consultation with the Office of Middle East Partnership Initiative (MEPI). A mix of male and female participants will be included, and a mix of religious and cultural backgrounds represented. All participants will be conversant in English.

This project addresses the MEPI goals of fostering political reform, educational reform and empowerment of women in MEPI partner countries. As participants will be selected in large part on the basis of their demonstrated leadership capacity, they will utilize the experience derived from the program in future positions of stewardship in their home countries.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. A syllabus should be included that indicates the subject matter for each lecture, panel discussion or other activity (*e.g.*, group exercises), confirms or provisionally identifies proposed lecturers and session leaders, and clearly shows how assigned readings will support each session. A calendar of all program activities must also be included. Additionally, applicant institutions should describe their plans for public and media outreach in connection with the program.

Budget Guidelines: Based on a group of 21 participants, the total Bureau-funded budget (program and administrative) for the program should be approximately $340,000. Justifications for any budget in excess of this amount must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' document in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Middle East Partnership Initiative Study of the United States Institutes for Graduating High School Seniors (ECA/A/E/USS–04–08–Benda)

FOR FURTHER INFORMATION CONTACT: To obtain more information about these programs, or to request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street SW., Washington, DC 20547,

Attention: Peter Benda.

Telephone number: (202) 619–5893.

Fax number: (202) 619–6790.

Internet address: BendaPM@state.gov.

The Study of the U.S. Branch is available to consult with potential applicants regarding proposal content and preparation up until the proposal submission deadline. Please specify Program Officer Peter Benda on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is March 12, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shopped after the established deadline are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: ECA/A/E/USS–04–08–Benda, Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. If possible, please also include on the disk any program calendar or syllabus addendum to the proposal.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Adherence to all Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR Part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. *Telephone:* (202) 401–9810. *FAX:* (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the ECA program office in consultation with the Office of Middle East Partnership Initiative (MEPI). Eligible proposals will then be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the Bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign secondary school students and any experience conducting summer (or other) intensive academic programs for foreign students in this age-range.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual

understanding between the people of the United States and the people of other countries...; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations....and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice: The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: January 23, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 04–1932 Filed 1–28–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between December 15, 2003 and January 9, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Agreements filed during the week ending December 19, 2003:

Docket Number: OST–2003–16721.

Date Filed: December 15, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SASC 0117 dated December 16, 2003.

Mail Vote 347—Resolution 010h Special Amending Resolution from India to Europe, Intended effective date: January 1, 2004.

Docket Number: OST–2003–16738.

Date Filed: December 16, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PSC/Reso/120 dated December 3, 2003.

Finally Adopted Resolutions & Recommended Practices r1–r30, Minutes—PSC/Mins/005 dated December 3, 2003, Intended effective date: June 1, 2004.

Docket Number: OST–2003–16775.

Date Filed: December 19, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SASC 0116 dated December 12, 2003.

TC23 Europe-South Asian Subcontinent Resolutions r1–r12, Minutes—PTC23 EUR–SASC 0118 dated December 19, 2003, Tables—PTC23 EUR–SASC Fares 0049 dated December 16, 2003, Intended effective date: April 1, 2004.

Agreements filed during the week ending January 9, 2004:

Docket Number: OST–2004–16853.

Date Filed: January 6, 2004.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 348, PTC3 0706 dated January 9, 2004.

TC3 Special Passenger Amending Resolution 010i between Japan, Korea and South East Asia r1–r9, Intended effective date: February 1, 2004.

Docket Number: OST–2004–16898.

Date Filed: January 9, 2004.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SWP 0082 dated December 12, 2003.

TC23/TC123 Europe-South West Pacific Resolutions r1–r14, Correction—PTC23 EUR–SWP 0083 dated December 23, 2003, Minutes—PTC23 EUR–SWP 0085 dated December 26, 2003, Tables—PTC23 EUR–SWP Fares 0047 dated December 12, 2003, Intended effective date: April 1, 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–1925 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed With the Department Between December 15, 2003 and January 9, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions To Modify Scope are set forth below for each application. Following the Answer Period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications filed during week ending December 19, 2003:

Docket Number: OST–2003–16767.

Date Filed: December 18, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 2004.

Description: Application of Spirit Airlines, Inc., pursuant to 49 U.S.C. 41102, 41108 and subpart B, requesting issuance of a certificate of public convenience and necessity authorizing Spirit to provide scheduled foreign air transportation of persons, property, and mail between any point in the United States, on the one hand, and any point or points in the countries listed in Exhibit 1.

Docket Number: OST–2003–16773.

Date Filed: December 19, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 2004.

Description: Application of Ameristar Air Cargo, Inc. d/b/a Ameristar Charters, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Ameristar to provide interstate charter air transportation of persons, property and mail.

Docket Number: OST–2003–16774.

Date Filed: December 19, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 2004.

Description: Application of Ameristar Air Cargo, Inc. d/b/a Ameristar Charters, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public

convenience and necessity authorizing Ameristar to engage in foreign charter air transportation of persons.

Applications filed during week ending December 26, 2003:

Docket Number: OST–2003–16783.

Date Filed: December 22, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 12, 2004.

Description: Application of Arkia Israeli Airlines, Ltd., pursuant to 49 U.S.C. 41302, 14 CFR part 211 and subpart B, requesting a foreign air carrier permit authorizing it to engage in the charter foreign air transportation of persons, property, and mail between a point or points in Israel, on the one hand, and a point or points in the United States, on the other hand, either directly or via intermediate points in other countries, with or without stopovers (for technical purposes) and beyond, as authorized by the August 16, 1978 Protocol to the June 13, 1950 Air Transport Agreement.

Docket Number: OST–2003–16812.

Date Filed: December 24, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 2004.

Description: Application of PSA Airlines, Inc., d/b/a US Airways Express, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing it to engage in interstate scheduled air transportation of persons, property and mail with large aircraft.

Docket Number: OST–2003–16813.

Date Filed: December 24, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 2004.

Description: Application of PSA Airlines, Inc. d/b/a US Airways Express, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing it to engage in foreign scheduled air transportation of persons, property, and mail with large aircraft, operating as US Airways Express.

Applications filed during week ending January 2, 2004:

Docket Number: OST–2003–16831.

Date Filed: December 30, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 20, 2004.

Description: Application of Pullmantur Air, S.A., pursuant to section 402 and subpart B, requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property, baggage, cargo, and mail between any point or points in the Kingdom of Spain and any point or points in the United States, together with authority to engage in other charter trips in foreign air transportation, subject to the terms, conditions and limitations of the Department's Economic Regulations.

Docket Number: OST–2003–16842.

Date Filed: December 31, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 2004.

Description: Application of Aero Services—Corporate S.A., pursuant to 49 U.S.C. 41301 and subpart B, requesting an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property, and mail between France and the United States and between the United States and third countries in accordance with and to the full extent authorized by the U.S.-France Air Transport Agreement.

Docket Number: OST–2003–16843.

Date Filed: December 31, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 2004.

Description: Application of Aero Services—Executive S.A., pursuant to 49 U.S.C. 41301 and subpart B, requesting an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property, and mail between France and the United States and between the United States and third countries in accordance with and to the full extent authorized by the U.S.-France Air Transport Agreement.

Applications filed during week ending January 9, 2004:

Docket Number: OST–2003–16690.

Date Filed: January 7, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 2004.

Description: Application of Arrow Air, Inc., pursuant to the Department's Notice and 49 U.S.C. 41101 and 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in scheduled all-cargo foreign air transportation of property and mail between a point or points in the United States and a point or points in Brazil, to integrate the authority with its existing certificate and exemption authority and to commingle traffic consistent with applicable aviation agreements.

Docket Number: OST–2003–16690.

Date Filed: January 7, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 2004.

Description: Application of Amerijet International, Inc., pursuant to the Department's Notice 49 U.S.C. chapter 411 and subparts B and C, requesting a certificate of public convenience and necessity and request for an allocation of frequencies authorizing it to provide scheduled foreign air transportation of property and mail between the United States and Brazil.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–1926 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 16, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15095.

Date Filed: January 12, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 2, 2004.

Description: Amendment No. 1 of Sun D'or International Airlines, Ltd., to its application for a foreign air carrier permit, requesting charter foreign air transportation with wet-leased aircraft of persons, property, and mail between a point or points in Israel, on the one hand, and a point or points in the United States, on the other, either directly or via intermediate points, with or without stopovers and beyond, subject to the terms, conditions and limitations of the Department's regulations governing charters.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–1927 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–16958]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AT SEA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16958 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–16958. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AT SEA is:

Intended Use: ''Dinner cruises, sportfishing, diving, surfing excursions.''

Geographic Region: ''California.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1871 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–16959]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SCHEDAR.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16959 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–16959. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SCHEDAR is:

Intended Use: ''Bareboat, Captained and Crewed Charters.''

Geographic Region: ''Florida, Puerto Rico and the Virgin Islands.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1870 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2204–16955]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEA ANGEL.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under

certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16955 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–16955. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA ANGEL is:

Intended Use: ''Sail training vessel chartered to the New Jersey Sailing School.''

Geographic Region: ''Maine through New Jersey.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1874 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–16954]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPARTAN.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16954 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–16954. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SPARTAN is:

Intended Use: ''Sailing Charters.''

Geographic Region: ''U.S. East Coast.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1875 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–16957]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STEPPING STONE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16957 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a

waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–16957. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STEPPING STONE is:

Intended Use: ''Day sail charters.''

Geographic Region: ''New Jersey Coast.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1872 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–16956]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STURDY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–16956 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 1, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 16956. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STURDY is:

Intended Use: ''Sailing charters.''

Geographic Region: ''Florida and U.S. Virgin Islands.''

Dated: January 22, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1873 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP03–007

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice describes the reasons for denying a petition (DP03–007) submitted to NHTSA pursuant to 49 U.S.C. 30162, requesting that the agency open a defect investigation into unintended acceleration involving model year (MY) 1996 and 1997 General Motors J-cars (Chevrolet Cavaliers and Pontiac Sunbirds).

FOR FURTHER INFORMATION CONTACT: Bob Young, Office of Defects Investigation (ODI), NHTSA; 400 Seventh Street, SW.; Washington, DC 20590. Telephone: 202–366–4806.

SUPPLEMENTARY INFORMATION: On September 23, 2003, NHTSA received a petition filed by Donald Friedman of MCR/LRI, Inc.; requesting that the agency ''open a defect investigation into unintended acceleration involving 1996 and 1997 model General Motors J-cars (Chevrolet Cavaliers and Pontiac Sunbirds [sic] [Subject Vehicles]).''

The petitioner claims this request is based on a ''report [he] received for GM'' showing that it had received 660 complaints of unintended or sudden acceleration involving the subject vehicles. By comparison, the petitioner claimed, other GM models had far fewer complaints.

NHTSA has reviewed the facts claimed to establish that a defect investigation of the subject vehicles for unintended acceleration should be opened. The results of this review and our analysis of the petition is provided in the DP03–007 Petition Analysis Report, published in its entirety as an appendix to this notice.

For the reasons presented in the petition analysis report, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of conducting the requested defect investigation. Therefore, in view of the need to

allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator For Enforcement.

Appendix—Petition Analysis—DP03–007

1.0 Introduction

On September 23, 2003, the National Highway Traffic Safety Administration (NHTSA) received a petition filed by Donald Friedman requesting that it ''open a defect investigation into unintended acceleration [UA] involving 1996 and 1997 model General Motors J-cars (Chevrolet Cavaliers and Pontiac Sunbirds [sic[1]]).'' In this petition analysis, we will refer to sudden acceleration incidents as ''SAIs,'' incidents of unintended acceleration as ''UAIs,'' and to the MY 1996–97 GM J-cars as the ''Subject Vehicles.''

The petitioner claims, ''The basis for this request is a report we received for GM[2] showing that it had received 380 complaints on unintended or sudden acceleration involving 1996 models and 280 complaints involving 1997 models [a total of 660 complaints]. This compares with an average of around 20 complaints per year per model on other GM models and no more than 10 complaints per year on J-cars of years other than 1996 and 1997.''

2.0 Background

On April 14, 1997, at approximately 11:51 a.m., 21 year-old Timothy Langston was driving his MY 1997 Chevrolet Cavalier on a two lane road in Cherokee County, Georgia with two minor passengers; Lee and Alana Anderson. It is alleged that, after cresting a hill at about 40 mph, the car accelerated to approximately 94 mph, whereupon Mr. Langston lost control of the vehicle and it crashed. Timothy and Lee were killed and Alana was injured.

On April 5, 1999 a wrongful death and personal injury lawsuit was filed in the State Court of Cobb County, Georgia on behalf of Mr. Langston and Mr. and Ms. Anderson.[3] The suit alleges that the vehicle crash was due to unintended acceleration.[4]

According to General Motors, its response to a plaintiff pre-trial discovery request included reports of alleged UA and/or SA incidents for all MY 1982 to 2000 GM passenger cars. In response to a separate discovery request, GM also produced reports concerning alleged brake failure in the subject vehicles.[5]

On July 3, 2003, after receiving, reviewing, and tabulating ''thousands'' of GM customer complaints produced during discovery, the plaintiff introduced into evidence 235 non-duplicative reports of other incidents alleged to be substantially similar to that in *Anderson* (*i.e.,* Other Similar Incidents or ''OSI's'').[6] Of these, 38 involved the MY 1996–1997 J-cars; 32 related to the MY 1996–1997 N-car platform,[7] and 84 concerned other MY 1996 and 1997 GM passenger cars. Because, according to the Plaintiffs, ''there would be no residual evidence that will categorically indicate the specific defect'' due to ''the destruction of the [Langston Cavalier], and the nature of the potential defects, including electrical malfunctions and computer errors,''[8] they introduced these alleged OSI reports as ''Evidence of a defect in General Motors' vehicles.''[9]

The plaintiffs retained Donald Friedman to offer expert testimony about the cause of the Langston crash. To aid in his analysis, the plaintiffs provided him with their tabulation of the thousands of reports received during discovery and copies of the J-car OSI reports. Mr. Friedman later referred to the plaintiff's tabulation as a ''report for GM'' in his NHTSA petition.

After receiving his petition, NHTSA wrote to the petitioner requesting a copy of the ''report'' and clarification of the data he presented. Without addressing our request for a copy of the report he identified initially, Mr. Friedman responded that his data could be found in pre-trial discovery material produced by GM in the *Anderson* case and referred us to General Motors.

Subsequently, General Motors provided information concerning both the 660 complaints cited by the petitioner and the alleged OSI's identified by the plaintiff.

3.0 Petition Data Analysis

3.1 SAI and UAI

The petitioner requested an investigation of the subject vehicles for ''unintended acceleration.'' He then states that the foundation for his request is a ''report'' documenting a substantial number of alleged ''unintended or [emphasis added] sudden acceleration'' complaints about the subject vehicles. Therefore, our analysis relates to complaints where either a SAI or UAI (SAI/UAI) was alleged. This is consistent with the plaintiff's—and petitioner's—approach in *Anderson*. For an explanation of the difference between SAI's and UAI's, please refer to footnote 4.

3.2 J-cars vs. Other GM models—Complaint Count

GM's discovery production in the *Anderson* case included customer SAI/UAI allegations for all GM vehicles (including J-cars) for MY's 1982–2000. In response to a separate discovery request, GM also produced braking-related complaints for the subject vehicles. Thus, the 660 complaints cited by the petitioner include allegations of unintended and/or sudden acceleration and braking-related issues involving the MY 1996–1997 J-cars. Since the complaint count for the other GM platforms does not include braking-related complaints, the J-car count is overstated by comparison.

To overcome this shortcoming, we analyzed the OSI's identified by the plaintiffs in *Anderson*.[10] Based on the OSI report count prepared by the plaintiffs from complaints produced by GM in pre-trial discovery, we found the following MY 1996–97 GM passenger car platforms had these SAI/UAI report counts:

TABLE 1.—ALLEGED REPORT COUNTS FOR OTHER SIMILAR INCIDENTS INVOLVING SA OR UA

MY 1996–1997 GM platform (model)	SA/UA count
Z (Saturn)	8
A (Cutlass, Century)	10
F (Camaro, Firebird)	14
K (Deville, Concours, Seville, SLS, STS)	15
W (Lumina, Monte Carlo, Grand Prix, Cutlass Supreme, Regal, Century Custom)	15
N (Malibu, Grand Am, Achieva, Skylark, Cutlass, Alero)	32
J (Cavalier, Sunfire)	38

From this analysis alone, the petitioner's rationale—that the MY 1996–97 J-cars should be investigated for unintended acceleration because they have far more reports than other GM models—does not appear justified because the total number of alleged SAI/UAIs is directly related to the number of these vehicles on the road. Thus, everything else being equal, the subject vehicles may have more reports than other GM vehicle platforms but, without normalizing for variations in the on-road fleet of each model, this information can be misleading. Therefore the total number of alleged SAI/UAIs is insufficient on its own to assess risk. To overcome this problem, we normalized the report counts identified in Table 1 by dividing the number of alleged SAI/UAI reports by the number of vehicles built to obtain a report count rate. The normalized rates are presented below.

[1] Pontiac's J-car model in MY 1996–97 was the Sunfire.

[2] The ''report'' referenced by the petitioner was a tabulation of GM customer complaints prepared by the plaintiffs in a product liability lawsuit.

[3] *Anderson-Barahona, et al.* v. *General Motors Corporation,* (case no. 99A1971–4 (*Anderson*)). Settled on September 12, 2003.

[4] ''Unintended Acceleration'' (UA) involves events that begin after the vehicle has reached an intended roadway speed. This differs from ''Sudden Acceleration'' (SA) where the event typically begins while the vehicle is stationary.

[5] *Anderson:* GM's Motion in Limine, June 3, 2003, p. 5.

[6] *Anderson:* Response to GM's June 3rd Motion in Limine, July 3, 2003, p. 3. ODI has not reviewed these complaints.

[7] Chevrolet Malibu, Pontiac Grand AM, Buick Skylark, and Oldsmobile Achieva, Cutlass, and Alero.

[8] *Anderson:* Response to Defendants June 3rd Motion in Limine, July 3, 2003, p. 2.

[9] Ibid, p. 3.

[10] *Anderson*: Schedules A, B, and C; Plaintiff's July 3, 2003 notice of filing documents in support of plaintiffs' response to defendants June 3, 2003 Limine motion.

TABLE 2.—REPORT RATES FOR OTHER SIMILAR INCIDENTS INVOLVING ALLEGED SA OR UA

MY 1996–1997 GM platform (model)	Rate/ 100,000 Vehs
Z (Saturn)	1.39
A (Cutlass, Century)	5.52
F (Camaro, Firebird)	7.75
K (Deville, Concours, Seville)	5.21
W (Lumina, Monte Carlo, Grand Prix, Cutlass Supreme, Regal, Century Custom)	1.49
N (Malibu, Grand Am, Achieva, Skylark, Cutlass)	4.23
J (Cavalier, Sunfire)	4.99

Based on this analysis, using data produced by GM in the lawsuit prompting this petition, the risk of an alleged SAI/UAI involving the subject vehicles is within the range of other GM models.

4.0 ODI Data

ODI also looked at complaint counts in NHTSA's consumer complaint database. Our review identified 256 complaints coded as ''Vehicle Speed Control'' (VSC) [11] for the models identified in Tables 1 and 2. We then normalized this data to account for exposure, based on the number of vehicles built within each platform in MY 1996 and 1997, to determine whether incidents involving vehicle speed control malfunctions are more frequently reported to NHTSA by J-car owners.

TABLE 3.—NHTSA REPORT RATE—VEHICLE SPEED CONTROL

MY 1996–1997 GM platform (model)	Rate/ 100,000 Vehs
Z (Saturn)	4.71
A (Cutlass, Century)	7.72
F (Camaro, Firebird)	6.64
K (Deville, Concours, Seville)	5.95
W (Lumina, Monte Carlo, Grand Prix, Cutlass Supreme, Regal, Century Custom)	7.05
N (Malibu, Grand Am, Achieva, Skylark, Cutlass)	10.15
J (Cavalier, Sunfire)	6.04

This analysis does not indicate that the subject vehicles (MY 1996–1997 GM J-cars) are experiencing vehicle speed control-related problems more frequently than other GM models.

[11] With NHTSA's recent rollout of the ARTEMIS consumer complaint repository, all complaints that may involve a SAI and/or UAI are coded (or in the case of reports pre-dating the roll-out, re-coded) as Vehicle Speed Control-related. These SAI/UAI complaints form a subset of all complaints where a problem related to vehicle (*e.g.*, engine) speed control was alleged (including, for example, stalling complaints).

5.0 Conclusion

Based on the foregoing analysis, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Friedman's petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

[FR Doc. 04–1864 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–16949]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 23, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

Annex A

Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–2003–15683

Nonconforming Vehicles: 1982 Triumph TSS Motorcycles.
Substantially similar U.S.-certified vehicle: 1982 Triumph TSS Motorcycles.
Notice of Petition Published at: 68 FR 43254 (July 21, 2003).
Vehicle Eligibility Number: VSP–409.

2. Docket No. NHTSA–2003–16206

Nonconforming Vehicles: 2000–2002 Jaguar S-Type Passenger Cars.
Substantially similar U.S.-certified vehicle: 2000–2002 Jaguar S-Type Passenger Cars.
Notice of Petition Published at: 68 FR 56042 (September 29, 2003).
Vehicle Eligibility Number: VSP–411.

3. Docket No. NHTSA–2003–16402.

Nonconforming Vehicles: 2002 Nissan Pathfinder 4 Wheel Drive Multi-purpose Passenger Vehicles.
Substantially similar U.S.-certified vehicle: 2002 Nissan Pathfinder 4 Wheel Drive Multi-purpose Passenger Vehicles.
Notice of Petition Published at: 68 FR 62345 (November 3, 2003).
Vehicle Eligibility Number: VSP–412.

4. Docket No. NHTSA–2003–16449

Nonconforming Vehicles: 2000 Mazda MPV Multi-Purpose Passenger Vehicles.
Substantially similar U.S.-certified vehicle: 2000 Mazda MPV Multi-Purpose Passenger Vehicles.
Notice of Petition Published at: 68 FR 63844 (November 10, 2003).
Vehicle Eligibility Number: VSP–413.

5. Docket No. NHTSA–2003–16450

Nonconforming Vehicles: 2000–2002 BMW 5 Series Passenger Cars.
Substantially similar U.S.-certified vehicle: 2000–2002 BMW 5 Series Passenger Cars.
Notice of Petition Published at: 68 FR 63843 (November 10, 2003).
Vehicle Eligibility Number: VSP–414.

6. Docket No. NHTSA–2003–16474

Nonconforming Vehicles: 1999–2003 Suzuki GSX–R 750 Motorcycles.
Substantially similar U.S.-certified vehicle: 1999–2003 Suzuki GSX–R 750 Motorcycles.
Notice of Petition Published at: 68 FR 64680 (November 14, 2003).
Vehicle Eligibility Number: VSP–417.

7. Docket No. NHTSA–2003–16473

Nonconforming Vehicles: 2002–2003 Mercedes Benz E–320 (211 chassis) Passenger Cars.
Substantially similar U.S.-certified vehicle: 2002–2003 Mercedes Benz E–320 (211 chassis) Passenger Cars.
Notice of Petition Published at: 68 FR 64678 (November 14, 2003).
Vehicle Eligibility Number: VSP–418.

8. Docket No. NHTSA–2003–16480

Nonconforming Vehicles: 1999 Chevrolet Corvette Coupe Passenger Cars.
Substantially similar U.S.-certified vehicle: 1999 Chevrolet Corvette Coupe Passenger Cars.
Notice of Petition Published at: 68 FR 64947 (November 17, 2003).
Vehicle Eligibility Number: VSP–419.

9. Docket No. NHTSA–2003–16508

Nonconforming Vehicles: 2000 MV Agusta F4 Motorcycles.
Substantially similar U.S.-certified vehicle: 2000 MV Agusta F4 Motorcycles.
Notice of Petition Published at: 68 FR 65112 (November 18, 2003).
Vehicle Eligibility Number: VSP–420.

10. Docket No. NHTSA–2003–16510

Nonconforming Vehicles: 1999–2003 Ducati 748 and 916 Motorcycles.
Substantially similar U.S.-certified vehicle: 1999–2003 Ducati 748 and 916 Motorcycles.
Notice of Petition Published at: 68 FR 65112 (November 18, 2003).
Vehicle Eligibility Number: VSP–421.

11. Docket No. NHTSA–2003–16528

Nonconforming Vehicles: 2004 Harley Davidson FX, FL, XL and VRSCA Motorcycles.
Substantially similar U.S.-certified vehicle: 2004 Harley Davidson FX, FL, XL and VRSCA Motorcycles.
Notice of Petition Published at: 68 FR 65489 (November 20, 2003).
Vehicle Eligibility Number: VSP–422.

12. Docket No. NHTSA–2003–16481

Nonconforming Vehicles: 1991–1994 Mercedes Benz S class (140 car line) Passenger Cars.
Substantially similar U.S.-certified vehicle: 1991–1994 Mercedes Benz S class (140 car line) Passenger Cars.
Notice of Petition Published at: 68 FR 64945 (November 17, 2003).
Vehicle Eligibility Number: VSP–423.

[FR Doc. 04–1862 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–16948]

Notice of Receipt of Petition for Decision that Nonconforming 2003–2004 CFMOTO CF125T–2 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 2003–2004 CFMOTO CF125T–2 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2004 CFMOTO CF125T–2 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is March 1, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register**

of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Aberdeen, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether 2003–2004 CFMOTO CF125T–2 motorcycles that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards are eligible for importation into the United States. U.S. SPECS contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that 2003–2004 CFMOTO CF125T–2 motorcycles have safety features that comply with Standard Nos. 111 *Rearview Mirrors,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner claims that the vehicles are assigned vehicle identification numbers that conform to the requirements of 49 CFR part 565.

The petitioner also contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of a DOT compliant headlamp system assembly; (b) installation of red rear side reflectors and amber front side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, a red rear reflector, and front and rear turn signals that conform to the requirements of the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* (a) Inscription of the appropriate symbol on the supplemental stop engine control mounted on the right handlebar; (b) modification of the speedometer to read in miles per hour. The petitioner states that other controls and displays on the vehicles conform to the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 23, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–1863 Filed 1–28–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety, Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 1, 2004.

ADDRESS COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 22, 2004.

R. Ryan Poston,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13346–N		Stand-By-Systems, Inc., Dallas, TX.	49 CFR 171.8	To authorize the transportation in commerce of a specially designed medical oxygen device to be classed and described as ''sodium chlorate'', Division 5.1, limited quantity, in lieu of an oxygen generator. (Modes 1, 2, 3).
13356–N		Bayshore Vinyl Compounds Inc., Tennent, NJ.	49 CFR 174.67(j)&(i)	To authorize rail cars without adapter fittings to be used for transporting Class 9 hazardous materials. (Mode 2).

NEW EXEMPTION—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13359–N		BASF Corporation, Mt. Olive, NJ.	49 CFR 173.302(a)	To authorize the transportation in commerce of boron trifluoride, a non-liquefied, Divison 2.3 (Hazard Zone B) gas in a non-DOT specification spherical pressure vessel. (Modes 1, 2, 3).
13360–N		The Dezac Group Ltd., Cheltenham, Gloucestershire, UK.	49 CFR 173.306	To authorize the transportation in commerce of an aerosol-style container containing only a non-flammable, liquefied compressed gas to be transported as a limited quanity and/or ORM–D Consumer Commodity. (Modes 1, 2, 3, 4).
13361–N		Fireboy-xintex, Inc., Grand Rapids, MI.	49 CFR 173.309(a)(3)(i)	To authorize the transportation in commerce of non-DOT specification cylinders charged up to 240 psi for use in transporting liquefied compressed gas. (Modes 1, 2, 3, 4, 5).

[FR Doc. 04–1865 Filed 1–28–04; 8:45 am]

BILLING CODE 4909–6077

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before February 13, 2004.

ADDRESS COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 23, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Nature of exemption thereof
7774–M		Pipe Recovery Systems, Inc., Houston, TX.	To modify the exemption to authorize the maximum filling density be such that the liquid content must not completely fill the non-DOT specification cylinder at 54 degrees C.
8215–M		Olin Corporation, Brass and Winchester, Inc., East Alton, IL.	To modify the exemption to authorize the addition of a Division 1.1D material and for Division 1.1A and 1.1D materials to be transported in a newly designed motor vehicle (trailer).
12674–M	RSPA–01–9373	G & S Aviation, Donnelly, ID	To modify the exemption to authorize an increase of the maximum amount of Division 2.1 material from 60 pounds to 80 pounds net product aboard each passenger-carrying aircraft.
12782–M	RSPA–01–10318	Air Liquide America L.P., Houston, TX.	To modify the exemption to authorize the transportation of certain Division 2.2 and 2.3 materials in DOT Specification cylinders equipped with plastic valve protection caps.
13047–M	RSPA–02–12807	U.S. Department of Defense, Fort Eustis, VA.	To modify the exemption to authorize cargo vessel as an additional mode of transportation for transporting Division 2.3 materials in DOT Specification cylinders or multi-unit tank car tanks equipped with emergency A and B kits.
13335–M	RSPA–03–16578	D & D Proves It Inc., Salina, KS	To reissue the exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas residue vapors in non-DOT specification packaging.

[FR Doc. 04–1866 Filed 1–28–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34440]

Union Pacific Railroad Company; Temporary Trackage Rights Exemption; Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line between BNSF milepost 474.1 near Marion, AR, and BNSF milepost 476.2 near Presley Junction, AR, a distance of approximately 2.09 miles.

The transaction was scheduled to be consummated on January 16, 2004, and the authorization is scheduled to expire on or about July 31, 2004.[1] The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States,* 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8).[2] If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34440, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179.

[1] By facsimile filed on January 13, 2004, UP corrected the expiration date of the temporary overhead trackage rights agreement stated in its notice of exemption filed on January 9, 2004.

[2] The Board adopted a new class exemption for trackage rights that, by their terms, are for overhead operations only and expire on a date certain, not to exceed 1 year from the effective date of the exemption. *See Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights,* STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003).

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov.*

Decided: January 21, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1674 Filed 1–28–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, ''(MA)—Real Estate Lending and Appraisals—12 CFR 34.''

DATES: You should submit written comments by March 29, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0190, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0190), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend, without change, OMB approval of the following information collection:

Title: (MA)—Real Estate Lending and Appraisals—12 CFR part 34.

OMB Number: 1557–0190.

Description: The collections of information contained in 12 CFR part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

Subpart D requires that a national bank adopt and maintain written policies for real estate related lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. These requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 2,200.

Estimated Total Annual Responses: 2,200.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 121,050 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection

techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 22, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–1915 Filed 1–28–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—United Capitol Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: United Capitol Insurance Company, an Illinois company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 64 FR 35891, July 1, 1999. The Company's authority was terminated by the Department of the Treasury effective June 29, 2000. Notice of the termination was published in the **Federal Register** of July 13, 2000, on page 43404.

On November 14, 2001, upon a petition by the Director of Insurance of the State of Illinois, the Circuit Court of Cook County, Illinois issued an Order of Liquidation with respect to United Capitol Insurance Company. Nathaniel S. Shapo, the Director of Insurance of the State of Illinois, was appointed as the Liquidator. All persons having claims against United Capitol Insurance Company must file their claims by February 23, 2004, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875; Attn: Ms. Jennifer Blackwell, Legal Assistant.

The above office will consolidate and file any and all claims against United Capitol Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC (202) 512–1800. When ordering the Circular from GPO, use the following stock number 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: January 21, 2004.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–1842 Filed 1–28–04; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 69, No. 19

Friday, January 29, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for Emerging Markets Program

Correction

In notice document 04–1453 beginning on page 3304 in the issue of Friday, January 23, 2004, make the following correction:

On page 3304, in the second column, in the first line, ''genetic'' should read ''generic''.

[FR Doc. C4–1453 Filed 1–28–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 29, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4010–01; I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. The proposed measures include: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England (SNE) scallop dredge vessels; modifications to Vessel Monitoring System (VMS) requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank (GB); Special Access Programs (SAPs) to allow targeted harvest of healthy stocks of groundfish; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders.

DATES: Comments must be received by 5 p.m., February 27, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for Groundfish Amendment 13.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov,* or fax to Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395–7285.

Copies of Amendment 13, its Regulatory Impact Review (RIR), the Preliminary Regulatory Economic Evaluation (PREE), and the Draft Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. NMFS prepared an Initial Regulatory Flexibility Act analysis, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: *thomas.warren@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Council has been developing Amendment 13 since 1999, in order to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Significant events in the history of that development are described below.

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia (Court) on a lawsuit brought by the Conservation Law Foundation, Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans, et al.*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court did not impose a remedy, but instead asked the parties to the lawsuit to propose remedies consistent with the Court's findings. The Court specifically found that Framework 33 failed to meet the FMP's Amendment 9 and SFA overfishing and rebuilding targets. Amendment 9 established overfishing and rebuilding objectives intended to meet SFA requirements, but did not implement or analyze any specific measures necessary to meet the new overfishing and rebuilding objectives. Framework 33, which was developed after Amendment 9, was an annual adjustment required by Amendment 7 to meet Amendment 7 targets.

From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. The Settlement Agreement called for short-term measures to reduce overfishing while the Council completed its development of Amendment 13.

On April 29, 2002, NMFS published an interim final rule (67 FR 21139) under the authority of section 304(e), consistent with section 305(c), of the Magnuson-Stevens Act, which allows for interim measures to reduce overfishing until an amendment to stop overfishing and rebuild fish stocks is implemented, to implement the short-term measures called for by the Settlement Agreement. On May 6, 2002 (67 FR 30331), NMFS corrected the April 29, 2002, interim final rule to bring it into full compliance with the

Order. NMFS further amended the April 29, 2002, interim final rule on June 5, 2002 (67 FR 38608) to bring the regulations into conformance with a May 23, 2002, Order issued by the Court in response to a motion for reconsideration. NMFS proposed additional, more restrictive interim measures on July 1, 2002 (67 FR 44139), and implemented those measures on August 1, 2002 (67 FR 50292), also as required by the terms of the Settlement Agreement. A final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule, was published on January 28, 2003 (68 FR 4113), and another minor correction to the August 1, 2002, interim final rule was published March 25, 2003 (68 FR 14347). Descriptions of the measures implemented through the interim rules can be found in the preamble to those rules and are not repeated here.

The Order specified that management measures implemented by the August 1, 2002, interim final rule remain in effect until the completion of Amendment 13, which was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address concerns related to NMFS's Northeast Fisheries Science Center's (NEFSC) trawl survey and new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180-day period, ending July 27, 2003. Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two consecutive 180-day periods. Because the Order required that the interim management measures remain in effect until Amendment 13 is implemented, and because the Court granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004, in response to unanticipated events, NMFS proposed, on April 24, 2003 (68 FR 20096), an emergency action under authority of section 305(c) of the Magnuson-Stevens Act. In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order, the April 24, 2003, emergency rule proposed a pilot program to allow limited access NE multispecies vessels to lease their NE multispecies DAS. The proposed emergency rule was corrected on May 9, 2003 (68 FR 24914), and notification of changes to that rule was published June 20, 2003 (68 FR 36970). Due to the newness and potential controversiality of the DAS Leasing Program, NMFS extended the comment period through June 10, 2003, on the DAS leasing aspect of the proposed emergency rule only (68 FR 28188; May 23, 2003). On June 27, 2003 (68 FR 38234), NMFS published a final emergency rule that implemented many of the same measures implemented through the August 1, 2002, interim final rule, with some modifications in response to public comment, but did not implement the DAS Leasing Program. Because of the public comments received and the controversial aspects of the DAS Leasing Program, NMFS concluded that it would be better to develop such a program through the Council process than through emergency rulemaking; thus, NMFS withdrew the proposed DAS Leasing Program (68 FR 41549, July 14, 2003). The measures implemented through the June 27, 2003, emergency rule remain in effect at this time. The emergency measures were continued in effect through publication of a notice of continuation in the **Federal Register** on December 22, 2003 (68 FR 71032), pursuant to section 305(c) of the Magnuson-Stevens Act.

Amendment 13 was developed by the Council to end overfishing of all groundfish stocks and to rebuild all groundfish stocks that are overfished, and includes measures to minimize bycatch, to implement improved reporting and recordkeeping requirements, and to address other conservation and management issues. Amendment 13 also contains measures to minimize the adverse effects of fishing on EFH, in accordance with the Settlement Agreement resulting from the legal challenge *American Oceans Campaign, et al.* v. *Daley, et al.* (Civil Case Number 99–982 (GK)). In accordance with the EFH Settlement Agreement, Amendment 13 evaluates the impacts of fishing on EFH through analysis in the FSEIS and includes management measures designed to minimize the adverse effects of fishing on EFH to the extent practicable.

A notice of availability of a Draft Environmental Impact Statement for the EFH components of Amendment 13 was published on April 4, 2003 (68 FR 16511), with public comment accepted through July 2, 2003. A notice of availability of the Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018), with public comments accepted through October 15, 2003. A correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

A notice of availability for Amendment 13, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on December 29, 2003 (68 FR 74939). The comment period on Amendment 13 ends on February 27, 2004. In addition to the implementing measures proposed in this rule, Amendment 13 contains changes to overfishing definitions and other aspects of the management program that are not reflected in regulations.

Proposed Measures

Amendment 13 proposes a large number of changes to the management regime for the NE groundfish fishery. In order to provide the public with the clearest information possible on how the groundfish regulations would appear if Amendment 13 is approved and implemented, NMFS is publishing in this proposed rule the entirety of 50 CFR part 648, subpart F, that pertain to the groundfish fishery as they would appear if this proposed rule is adopted as final. The proposed regulations also reflect revisions to the existing text in subpart F that are not a result of Amendment 13; these revisions would remove obsolete language and improve organization and clarity of the regulations, but they are not substantive changes. A description of the proposed management measures follows.

1. Recreational Measures

The bag limit (possession limit) for cod aboard a private recreational vessel (*i.e.*, not a charter/party vessel) fishing while in the Exclusive Economic Zone (EEZ), or caught in the EEZ, would be changed to 10 cod per person per day, with no possession limit for haddock, year-round. The current possession limit is 10 cod and/or haddock, combined, per person per trip, from April 1 through November 30; and 10 cod and/or haddock, combined, per person per trip, no more than 5 of which may be cod, when fishing in the Gulf of Maine (GOM) from December 1 through March 31. The current seasonal bag limit restrictions for private recreational fishing vessels would be eliminated.

The possession limit for cod aboard a charter/party vessel fishing in the GOM would be changed to 10 cod per person

per day, year-round. The current possession limit when fishing in the GOM is 10 cod per person per trip, from April 1 through November 30; and 5 cod per person per trip, from December 1 through March 31. As with private recreational vessels, the current seasonal bag limit restrictions for charter/party vessels would be eliminated.

For charter/party vessels issued a Federal multispecies permit, and for private recreational vessels, any trip in excess of 15 hours and covering 2 calendar days would be considered a 2-day trip for purposes of calculating allowable bag limits. Allowable bag limits for recreational vessels conducting trips longer than 2 consecutive calendar days would be determined by adding 24 hours for each additional day to the 15-hour minimum, 2-day trip requirement. For example, to possess 3-days equivalent of the bag limit, a recreational vessel would have to fish at least 39 hours (15 plus 24) over a 3-consecutive-day period.

The minimum size for cod allowed to be possessed by persons fishing aboard private recreational and charter/party vessels subject to these regulations would be reduced from the current 23 inches (58.4 cm) total length (TL) to 22 inches (55.9 cm) TL. The minimum size for haddock would be reduced from 22 inches (55.9 cm) to 19 inches (48.2 cm) TL.

2. Handgear Permit

A new limited access permit category, called Handgear A, would be created for qualified vessels fishing with handgear (rod and reel, handline, or tub-trawl gear). To qualify for a Handgear A permit, a vessel must have been previously issued a NE multispecies open access Handgear permit, and must have landed at least a total of 500 lb (227 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit category, in at least one of the fishing years from 1997 through 2002 (fishing years are May 1 through April 30). Landings would need to be documented through dealer reports submitted to NMFS or other NMFS-approved entity, prior to January 29, 2004. A process would be established to allow vessel owners to appeal denials of Handgear A permits, if they believe the denials were based on incorrect information.

Vessels fishing under the limited access Handgear A permit would be allowed to land up to 300 lb (136 kg) of cod, one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Handgear A permits would be transferrable between vessels, with the transfers not subject to vessel size and horsepower upgrade restrictions. In addition to handline and rod-and-reel gear, open access Handgear and limited access Handgear A permit holders would be allowed to fish hand-hauled tub-trawl gear, with a maximum of 250 hooks. Definitions of ''handgear'' and ''tub-trawl'' would be added to § 648.2.

The trip limits under the current open access Handgear permit category would be modified to allow vessels to possess up to 75 lb (34.0 kg) of cod and one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Open access Handgear permitted vessels are currently subject to possession limits of 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined; one Atlantic halibut; and the daily possession limits allowed for the remaining regulated groundfish species. The cod trip limit for both the limited access Handgear A permit and the open access Handgear permit would be adjusted proportional to changes in the GOM cod trip limits for groundfish DAS vessels in the future, as necessary.

The creation of a limited access Handgear A permit would provide historical participants in this specialized component of the groundfish fishery with higher cod trip limits than they currently have, and provide holders of the Handgear A permits the flexibility to transfer or upgrade their vessels with little or no increase in fishing mortality to groundfish stocks, because of the specialized nature of the gear they fish.

3. Northern Shrimp Exempted Fishery

Amendment 13 proposes to remove the restriction that the northern shrimp fishery be conducted shoreward of the small-mesh fishery exemption line (§ 648.80(a)(5)). All other restrictions for participation in the northern shrimp fishery would remain in effect. This measure would provide greater flexibility to the northern shrimp fishery, by enabling the fishery to pursue shrimp over a larger area than is currently allowed, without jeopardizing conservation measures for groundfish stocks.

4. Tuna Purse Seine Access to Groundfish Closed Areas

Tuna purse seine gear is currently defined as exempted gear in the FMP. Under Amendment 13, tuna purse seine vessels would be allowed to fish in all groundfish closed areas, including Closed Area (CA) I, CA II, and Nantucket Lightship Closed Area (NLCA), subject to existing restrictions for using exempted gear in those areas. Fishing for, landing, or possessing any groundfish by vessels using purse seine gear would be prohibited, and vessels fishing under this exemption could not have on board gear capable of catching groundfish. Fishing under this exemption would not be allowed in the CA II Habitat Area of Particular Concern (HAPC). If the Administrator, Northeast Region, NMFS (Regional Administrator) determines that tuna purse seine vessels are adversely affecting habitat or groundfish stocks, individual vessels, or all vessels, could be prohibited from one or more of the groundfish closed areas.

Tuna purse seine gear is currently allowed in the groundfish seasonal closure areas and in the GOM year-round closure areas. The intent of this measure is to provide flexibility to purse seine vessels to pursue tuna, using exempted gear, throughout the groundfish management area, with the exception of the CA II HAPC. Because of the type of gear used in this fishery, and based on several years of experimental fishing, impacts on groundfish are expected to be minimal.

5. SNE Scallop Dredge Exemption Program

Unless otherwise prohibited in § 648.81, or unless prohibited under the scallop regulations, vessels with a limited access scallop permit that have declared out of the scallop DAS program as specified in § 648.10, or that have used up their scallop DAS allocations, unless otherwise restricted, and vessels issued a General Category scallop permit, would be allowed to fish in statistical areas 537, 538, 539, and 613, defined as the SNE Scallop Dredge Exemption Area, when not fishing under a groundfish DAS, with certain restrictions. A vessel meeting the above requirements and fishing in the SNE Scallop Dredge Exemption Area could not fish for, possess on board, or land any species of fish (as defined in the Magnuson-Stevens Act) other than Atlantic sea scallops. The combined dredge width used by such vessels could not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge. Dredges would be required to have at least an 8-inch (20.3-cm) twine top, to minimize bycatch of groundfish. The exemption would not provide access to the NLCA, unless specifically authorized through the groundfish FMP.

This measure would provide flexibility for vessels to fish for sea scallops in this area, as authorized under the Atlantic Sea Scallop Fishery Management Plan (§ 648.52(a)) in an

area of SNE where such fishing is not currently allowed. The use of scallop dredges, with the restrictions that would be required under this proposed measure, is not expected to result in significant catches of groundfish.

6. Modified VMS Operational Requirements

Under Amendment 13, a vessel using a VMS could opt out of the VMS program for a minimum period of 1 calendar month by notifying the Regional Administrator. Such notification would be required to include the date the vessel would resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator could stop sending VMS reports to NMFS, but could not engage in any fishery until the VMS is turned back on. This would enable vessel owners to turn off power to the VMS unit and to save on the costs of VMS polling during periods when their vessel is under repair or, for some other reason, is not engaged in fishing.

7. Standards for Certification of Exempted Fisheries

Vessels are currently prohibited from fishing in the GOM, GB, and SNE exemption areas unless fishing: (1) Under a groundfish or scallop DAS; (2) with exempted gear; (3) under the small-vessel exemption; (4) under the scallop state-waters exemption; or (5) in an exempted fishery. Under current regulations (§ 648.80(a)(8) and (b)(4)), an exempted fishery may be added in an existing fishery for which there is sufficient information to determine the amount of regulated groundfish species bycatch if the Regional Administrator, after consultation with the Council, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, and that such exemption will not jeopardize the fishing mortality objectives.

Under Amendment 13, the standards for certification of exempted fisheries that were implemented through Amendment 7 to the FMP would continue to be used, but with the following changes:

The incidental catch standard (5 percent of the total catch, by weight) could be modified by the Council or Regional Administrator, for those groundfish stocks that are not in an overfished condition, or if overfishing is not occurring. In order for the Council or Regional Administrator to modify the exemption standard, it must be demonstrated that the modification would not cause a delay in a rebuilding program, would not result in overfishing of a stock, and would not result in a stock becoming overfished. Other factors would also be considered in the certification of an exempted fishery, such as the impact of the fishery on juvenile fish, sacrifices in yield that would result from increases in fishing mortality, the ratio of target species to regulated species, the status of stock rebuilding, recent recruitment of groundfish species, etc. Under the proposed procedures, the incidental catch standard could be modified either through a Council action (framework adjustment) that would change the standard for all exempted fisheries, or on a case-by-case basis for specific exempted fisheries.

On a case-by-case basis, through approval by the Regional Administrator, with notification to the public through rulemaking consistent with the Administrative Procedure Act (APA), or through Council development of a framework action for NOAA Fisheries consideration, an exempted fishery in the GOM, GB, or SNE exemption areas, and a small mesh fishery in that portion of the Mid-Atlantic (MA) Regulated Mesh Area (RMA) outside of the SNE exemption area, could be authorized to possess and land certain regulated groundfish. In making that determination, the Council or Regional Administrator would consider the status of the stock or stocks caught in the exempted fishery; the risk that allowing possession of groundfish would result in increased landings of groundfish; the extent of the exempted fishery, in terms of both time and area; the possibility of expansion of the exempted fishery; whether the exempted fishery should be allowed to take place in a groundfish closed area; impacts of the exempted fishery on any groundfish stock that is overfished; and whether overfishing is already occurring on a stock that would be caught by the exempted fishery. Possession by an exempted fishery could be allowed for a groundfish stock under a rebuilding program, but only if it can be determined that the catch of that stock by the exempted fishery would not likely result in exceeding the rebuilding fishing mortality rate for that stock.

The intent of the proposed changes is to allow greater flexibility to the Council and NMFS to administer the exempted fishery program as groundfish stocks rebuild, while continuing to protect the groundfish stocks.

8. Flexible Area Action System (FAAS)

The FAAS management system, currently contained in § 648.85, would be eliminated by Amendment 13. The FAAS system was developed by the Council to provide a mechanism to respond quickly to bycatch problems in the groundfish fishery. However, experience demonstrated that it was infeasible to use the system as originally intended, due to administrative constraints that prevented the rapid action that was initially anticipated.

9. Periodic Adjustments to the FMP

The current annual process to make adjustments to the FMP (§ 648.90) would be revised to be a biennial adjustment process. The Plan Development Team (PDT) would perform a review and submit management recommendations to the Council every 2 years, with a review of each of the regulated multispecies, Atlantic halibut, and ocean pout. The first review would be in 2005, to determine necessary changes for the 2006 fishing year. This review would be completed by the PDT, based on the most current and best scientific information available. The PDT would consider relevant data and information provided by the NEFSC, as well as by the states, the Atlantic States Marine Fisheries Commission, the U.S. Coast Guard (USCG), and other sources. Adjustments would continue to be implemented on May 1 of the relevant year (the beginning of the fishing year). The PDT would recommend, for the Council's consideration, new measures, if necessary, to address current management needs in the FMP, within the scope of a framework adjustment. The PDT would review the most current data pertaining to landings, stock status, and fishing mortality rates; enforcement issues; DAS use; social and economic impacts; and any other relevant information. The Council would then hold at least two Council meetings and submit its recommendations to the Regional Administrator by December 1. The Regional Administrator would review the Council's recommendations, including the supporting analyses, and undertake rulemaking, consistent with the APA, to meet the May 1 implementation date. If the Council fails to submit measures by February 1, the Regional Administrator would be authorized to choose any PDT alternative not specifically rejected by the Council. For the 2005 review, an updated groundfish assessment, peer reviewed by independent scientists, would be conducted to facilitate the PDT review for the adjustment, if needed, for the 2006 fishing year. The PDT would also prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report, which would

include the most recent biological and socio-economic information.

In addition to the biennial review discussed above, the PDT would meet to conduct a review of the groundfish fishery by September 2008 to determine the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer reviewed by independent scientists, would be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in Amendment 13 would be examined during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination would be made as to whether the Amendment 13 biomass targets are still considered valid, given the response of the stocks to the management measures in Amendment 13 that were expected to result in certain stock levels by 2008.

Under the proposed procedures, the existing Multispecies Monitoring Committee would be folded into the PDT, and would cease to exist as a separate committee. As a result, the PDT membership would be revised to include technical staff from the Council, the NMFS Northeast Regional Office, the NEFSC (biologists, social scientists, and economists), technical personnel from state management agencies or qualified researchers, a representative from the USCG, the Chair of the Groundfish Advisory Panel, and another interested parties designated by the Council Chair. The PDT would continue to provide technical support to the Groundfish Committee in the development of FMP amendments. In addition, it would monitor the FMP and develop options for framework adjustments through the new biennial adjustment process.

The proposed adjustment process is intended to provide greater stability to the management of the groundfish fishery by adjusting management measures less frequently. It is also intended to be more streamlined than the current process.

10. Rebuilding Program

The proposed rebuilding program for groundfish stocks is the heart of Amendment 13. The Council adopted Alternative 5 in the DSEIS, which was based on management measures developed by the Council and on an industry proposal put forward by the Northeast Seafood Coalition, as its proposed rebuilding program. The intent is to rebuild all overfished groundfish stocks primarily through effort-reduction measures that are phased in over a period of several years. Because several stocks are currently not overfished, others are being overfished (*i.e.*, the fishing mortality rates on these stocks are too high), and some are in need of rebuilding to the levels that can produce maximum sustainable yield (MSY) on a continuing basis, a mixture of management measures is proposed to achieve all of the objectives. Amendment 13 attempts to balance the need to end overfishing of some stocks as quickly as possible, with the need to consider the economic and social impacts of effort reduction measures on the participants in the fishery and on fishing communities. The proposed measures to accomplish this are summarized as follows:

DAS Allocations

DAS, which form the effort currency in the groundfish fishery, would be reallocated, beginning in fishing year 2004. The allocation of DAS would be based on historic participation in the groundfish DAS fishery. The number of DAS that would be allocated to the fishery as a whole is based on the number that was determined to be appropriate and necessary to rebuild overfished stocks and end overfishing. The proposed DAS allocation is based on an expected DAS use rate, and takes into account additional DAS use that may result from implementation of a DAS Leasing Program, which is also proposed in Amendment 13. The DAS Leasing Program is described in more detail later in this preamble.

The allocation of a vessel's DAS would be calculated from that vessel's DAS baseline, defined as the maximum DAS used by that vessel in any single fishing year from qualifying fishing years 1996 through 2001 (May 1, 1996, through April 30, 2002). Qualifying years would be only those in which the vessel landed a total of 5,000 lb (2,268 kg) or more of regulated groundfish species. Landings would need to be documented through dealer reports submitted to NMFS or other NMFS-approved entity, prior to April 30, 2003. For fishing years 2004 and 2005, 60 percent of a vessel's DAS baseline would be defined as its ''Category A'' DAS, and 40 percent of a vessel's DAS baseline would be defined as its ''Category B'' DAS. Category B DAS would be further categorized as ''regular B'' DAS and ''reserve B'' DAS, each representing 20 percent of the vessel's DAS baseline. The difference between a vessel's fishing year 2001 DAS allocation and its DAS baseline would be the vessel's ''Category C'' DAS. Upon implementation of Amendment 13, either regular or reserve B DAS could be used in any approved SAPs, but neither could be used outside of an approved SAP. The procedures and restrictions applying to the use of regular B DAS when fishing outside of a SAP have not been developed, and would need to be implemented through future Council action, such as a framework. Category C DAS would not be made available to fish at this time.

Because groundfish DAS vessels would be allocated DAS based on their historical fishing records, the Fleet DAS permit category and the Large Mesh Fleet DAS permit category would be eliminated, since these categories represented a fleet average of DAS. Upon approval of Amendment 13, vessels currently fishing in the Fleet DAS and Large Mesh Fleet DAS permit categories would automatically be reissued permits in the Individual DAS and Large Mesh Individual DAS permit categories, respectively. Vessels affected by this change would have an opportunity to reapply for a different permit category.

DAS Use

Under Amendment 13, Category A DAS could be used to target any regulated groundfish stock. Beginning with the implementation of Amendment 13, any Category B DAS (*i.e.*, regular or reserve B DAS) could be utilized to fish in approved SAPs, subject to the requirements of the SAPs. Amendment 13 would require that each vessel would be required to have at least 1 Category A DAS remaining for each regular B DAS it intends to fish.

A vessel would be required to declare its intent to use a Category B DAS at the start of a fishing trip, and would need to specify which type of (regular or reserve) B DAS would be used on that trip. Even though regular B DAS could initially be used only while fishing within a SAP, NMFS would need to track the usage of both types of B DAS by each vessel, starting with the implementation of Amendment 13. That would enable NMFS and the vessels to know how many of each type of B DAS each vessel has remaining for the fishing year, should the Council develop a program for use of regular B DAS during the fishing year.

Vessel owners should be aware that Amendment 13 provides that, should a program for use of regular B DAS outside of SAPs be developed by the Council and implemented in the middle of a fishing year, the vessel would need to have Category A DAS available in order to fish the regular B DAS outside of a SAP during the remainder of that fishing year.

As groundfish stocks rebuild, there may be opportunities to increase the number of available Category A DAS. In that circumstance, Amendment 13 calls for all Category B DAS (regular and reserve) to be converted to Category A DAS before any Category C DAS would be converted to Category A DAS. If necessary to achieve rebuilding targets, Category A DAS could be changed to Category B DAS by the Council. Any DAS carried over from the 2003 fishing year into the 2004 fishing year would be classified as regular B DAS. For any DAS carried over from the 2004 fishing year into the 2005 fishing year, and for all subsequent fishing years, the carried-over DAS would be determined as follows: If a vessel has Category A DAS remaining, these would be carried over first; if the vessel has fewer than 10 A DAS remaining, then the vessel's regular B DAS would be carried over, up to a total of 10 DAS; if the vessel has fewer than 10 A DAS and regular B DAS, combined, remaining, then the vessel's reserve B DAS would be carried over, up to a total of 10 DAS, combined. For example, if a vessel ended a fishing year with 3 A DAS, 6 regular B DAS, and 10 reserve B DAS, that vessel's carry-over DAS would be 10 DAS, comprised of the following: 3 A DAS, 6 regular B DAS, and 1 reserve B DAS. Category C DAS could not be carried over and could not be fished.

Default Measures

Amendment 13 would establish fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates would be immediately reduced to a level that would end overfishing. For several other stocks, reductions in fishing mortality rates would be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures would automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which would allow a vessel to fish up to 55 percent of its DAS baseline allocation as A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE RMA, where DAS would be counted at a rate of 1.5 to 1. On May 1, 2009, there would be an additional DAS reduction of 10 percent, which would allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment would be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures would not occur if the Regional Administrator determines that the Amendment 13 projected target biomass levels for relevant stocks under Amendment 13, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, and overfishing is not occurring on those stocks. If these criteria are met, the Regional Administrator would publish that determination in the **Federal Register**, consistent with the requirements of the APA.

Trip Limits

The following modifications to the cod and yellowtail flounder trip limits are proposed, in order to meet Amendment 13 objectives:

GOM cod: The possession limit would be increased to 800 lb (363 kg)/DAS, with a limit of 4,000 lb (1,814 kg)/trip.

GB cod: The possession limit would be reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel elects to fish, through an annual declaration, exclusively with hook gear under the GB Cod Hook Gear Trip Limit Exemption Program. Similar to the Day or Trip Gillnet Category designation, a vessel would need to declare into the GB Cod Hook Gear Trip Limit Exemption Program when applying for its limited access groundfish permit.

The GB cod trip limit for hook vessels would be as follows:

January 1 through March 31: 2,000 lb (907 kg)/DAS;

April 1 through June 30: No hook gear (jig or demersal longline) fishing allowed on GB;

July 1 through September 15 (directed cod season for hook vessels): 2,000 lb (907 kg)/DAS; during this period, vessels could not land groundfish on Fridays or Saturdays; and September 16 through December 31 (restricted cod season): 600 lb (272 kg)/DAS.

Cape Cod (CC)/GOM yellowtail flounder, when fishing in the SNE/MA stock areas:

April 1 through May 31, and October 1 through November 30: 250 lb (113 kg)/trip; and

June 1 through September 30, and December 1-March 31: 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

SNE/MA yellowtail flounder, when fishing in the SNE/MA yellowtail flounder area (the SNE/MA stock area):

March 1 through June 30: 250 lb (113 kg)/trip; and

July 1 through February 28 (or 29): 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

Modifications to Gear Restrictions

Gear restrictions would be modified as follows, in order to meet Amendment 13 objectives:

For Day gillnet vessels fishing in the GOM RMA: The minimum mesh size for flatfish nets would be reduced from 7-inch (17.8-cm) mesh to 6.5-inch (16.5-cm) mesh.

For Trip gillnet vessels fishing in the GB RMA: The number of gillnets that could be used would be increased from 50 to 150.

For Day gillnet vessels fishing in the MA RMA: The number of roundfish gillnets that could be used would be reduced from 80 to 75, and the minimum mesh size would be increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch mesh (16.5-cm) (square or diamond); and

The number of flatfish gillnets that could be used would be reduced from 160 to 75, and the minimum mesh size would be increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch (16.5-cm) mesh (square or diamond).

A summary of the proposed gear requirements appears in Table 1.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges bank	SNE	Mid-Atlantic
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category*.	*Roundfish nets* 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net.	*All nets* 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net.	*All nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.	*Roundfish nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
	Flatfish nets 6.5″ (16.5 cm) mesh; 100-net allowance; 1 tag/net.			*Flatfish nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category*.	*All nets* 6.5″ (16.5 cm) mesh; 150-net allowance; 1 tag/net.	*All nets* 6.5″ (16.5 cm) mesh; 150-net allowance; 2 tags/net.	*All nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.	*All gillnet gear* 6.5″ (16.5 cm) mesh; 75-net allowance 2 tags/net.
Monkfish Vessels**	10″ (25.4 cm) mesh/150-net allowance			
	1 tag/net			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size* ...	6.5″ (16.5 cm) diamond or square		7.0″ (17.8 cm) diamond or 6.5″ (16.5 cm) square.	6.5″ (16.5 cm) diamond or square.
Large Mesh Category—entire net.	8.5″ (21.59 cm) diamond or square			7.5″ (19.0 cm) diamond or 8.0″ (20.3 cm) square.
MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK GEAR* **				
Limited access multi species vessels.	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6″ (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

*When fishing under a NE multispecies DAS.
**Monkfish Category C and D vessels, when fishing under a monkfish DAS.
***When fishing under a NE multispecies DAS or when fishing under the Small Vessel permit.

11. DAS Transfer Program

Limited access NE multispecies permit holders would be allowed to transfer DAS permanently to other limited access permit holders, subject to the following restrictions and conditions:

The length overall (LOA) baseline or gross registered tonnage baseline of the buyer/transferee vessel could not be more than 10 percent greater, and its horsepower could not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel would also be required to retire from all state and Federal commercial fisheries and to relinquish permanently all Federal and state fishing permits. Category A and B DAS that are transferred would be reduced by 40 percent; Category C DAS that are transferred would be reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) could be transferred, but vessels fishing under a sector allocation would be prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

The intent of the permit transfer measures is to allow vessel owners the flexibility to retire from the fishery, while reducing the overall DAS in the fishery. The requirement that all other permits be relinquished is intended to prevent vessels from transferring their groundfish permits and continuing to fish, potentially increasing effort in other fisheries that may already be fully or overcapitalized.

12. DAS Leasing Program

Amendment 13 proposes a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term ''lease'' refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year. Implementation of the proposed program would provide the industry an opportunity to mitigate economic impacts of the effort reduction measures proposed in Amendment 13.

Eligibility

All vessels with a valid limited access groundfish DAS permit would be eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing would be termed lessees; eligible vessels leasing-out DAS would be termed lessors. DAS associated with a CPH could not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, would not be allowed to lease DAS, and vessels participating in an approved sector under the proposed Sector Allocation Program in Amendment 13 would not be allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

Application Procedures

An eligible vessel wanting to lease groundfish DAS would be required to submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Vessels with a VMS would likely be able to receive notification of an approved lease agreement sooner than 45 days. Upon approval of the application by NMFS, the lessor and lessee would be sent written confirmation of the approved application. Leased DAS would be effective only during the fishing year for which they were leased. A vessel could lease to as many qualified vessels as desired, provided that all of the restrictions and conditions are complied with.

An application to lease DAS could be submitted at any time throughout the fishing year, up until March 1. A complete application would consist of the following: Lessor's owner name, vessel name, permit number and official number or state registration number; lessee's owner name, vessel name, permit number and official number or state registration number; the number of groundfish DAS to be leased; total price paid for the leased DAS; signatures of lessor and lessee; and the date the form was completed. Information obtained from the application would be held confidential in accordance with the requirements of the Magnuson-Stevens Act and applicable regulations.

The Regional Administrator could reject an application for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the lessor or lessee has not been issued a valid limited access groundfish permit, or is otherwise not eligible; the lessor's or lessee's DAS are under sanction pursuant to an enforcement proceeding; the lessor's or lessee's vessel is determined not in compliance with the conditions and restrictions of 50 CFR part 648; or the lessor has an insufficient number of allocated or unused groundfish DAS available to lease. Upon denial of an application, the Regional Administrator would send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator would be the final agency decision. There would be no appeal process.

Conditions and Restrictions

No subleasing of groundfish DAS would be allowed. This means that, once a lease application is approved by NMFS, the leased DAS could not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (*e.g.*, a vessel sinking). This restriction is necessary to ensure NMFS' ability to administer and account for all leased DAS in an efficient manner. Vessels would not be allowed to lease carry-over DAS. Only Category A DAS could be leased, and all leased DAS would be Category A DAS.

Vessels would be allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that could be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee would be able to fish that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a person wants to lease DAS for a vessel with a limited access groundfish permit, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it could lease would be 88. If the same vessel has 53 Category A DAS allocated to it in fishing year 2004, that vessel could hold and fish up to 141 Category A DAS for 2004 (the 53 A DAS allocated for fishing year 2004 plus the 88 DAS allocated to that vessel in fishing year 2001).

A lessor could not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also could not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA. This is intended to constrain effort by ensuring that leased DAS would be fished by vessels of similar fishing power.

History of DAS Use and Landings

Because, in the future, DAS use and landing history may be used to determine fishing rights, the proposed program includes a presumption for how such history would be accounted for. For ease of administration, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS would be presumed to be attributed to the lessee vessel. However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS would be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel had an allocation of 50 DAS, leased an additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel would be presumed to have used its 20 leased DAS first. This same vessel would be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings would be presumed to be attributed to the vessel that actually landed the fish (lessee). Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and costly for NMFS to implement.

In the case of multiple lessors, the leased DAS actually used would be attributed to the lessors based on the order in which such leases were approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 30 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 30 DAS used by lessee Vessel A during that fishing year would be attributed to lessor Vessel B, the next 20 DAS would be attributed to lessor Vessel C, and the next 50 DAS would be attributed to lessee Vessel A, for purposes of DAS-use history.

Monkfish Category C and D vessels

It is possible that a vessel with both a limited access groundfish permit and a limited access monkfish permit (monkfish Category C or D vessels), because of the groundfish DAS reductions proposed under Amendment 13, could have more allocated monkfish DAS than groundfish A DAS. Such vessel would be allowed to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Under this proposed rule, monkfish Category C and D vessels that have remaining monkfish-only DAS at the time of implementation of Amendment 13, and that have submitted a groundfish DAS Leasing Application that has been approved by NMFS, would be required to fish their available ''monkfish-only'' DAS in conjunction with their leased groundfish A DAS, to the extent that the vessel has groundfish A DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

If a monkfish Category C or D vessel leases groundfish A DAS to another vessel, the vessel would be required to forfeit a monkfish DAS for each

groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS − 37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C and D vessels must fish a groundfish A DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where groundfish A DAS are leased (transferred) would allow monkfish and groundfish A DAS to be fished independently. This could create a significant effort increase in the monkfish fishery.

13. U.S./Canada Resource Sharing Understanding

Amendment 13 would adopt and implement the U.S./Canada Resource Sharing Understanding (Understanding). Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder would be subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Eastern U.S./Canada Area has been modified slightly to encompass all of CA II for the purpose of better administration of the Understanding. The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

Measures to implement the Understanding proposed in Amendment 13 are intended to allow the U.S. groundfish fishery to harvest, but not exceed, the U.S. allocation of these three shared stocks. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas would be determined through a process involving the Council, the Transboundary Management Guidance Committee, and the U.S./Canada Steering Committee. Based on information available at this time, the U.S. TACs in fishing year 2004 are expected to be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. The Council will consider these recommendations at its January 2004 Council meeting; any different recommendation would be implemented through proposed and final rulemaking. Once any one of these TACs is reached, the Eastern U.S./Canada Area would be closed to all fishing by gear capable of catching groundfish, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area would not be closed, but would have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

Amendment 13 is intended to constrain catches of the three shared stocks by U.S. vessels to ensure that they will not exceed the U.S. allocations. The proposed management measures to implement the understanding are as follows: All NE multispecies DAS vessels fishing on a groundfish DAS in the U.S./Canada Management Areas would be required to utilize a fully functional VMS for the remainder of the fishing year. Vessels would be required to declare, through their VMS, prior to departure on a trip, the portion of the U.S./Canada Management Area they intend to fish in. For the purposes of selecting vessels for observer deployment, a vessel fishing in the U.S./Canada Area must provide notice to NMFS at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area. This notification would ensure that the desired level of observer coverage may be achieved in the U.S./Canada Area. Once declared into a specific area, a vessel could not fish outside of that area for the remainder of that fishing trip. Vessels making a trip in these areas would be required to report their GB cod, GB haddock and GB yellowtail flounder catches (including discards) through their VMS on a daily basis. Because these are ''hard'' TACs, and any overages in a given year would be paid back in a lower TAC for that stock in the next fishing year, it is essential that catches be reported in a timely manner. Groundfish vessels not under DAS would not be subject to the VMS requirement. To ensure enforceability of the Understanding, all groundfish vessels fishing with a VMS would be polled at least twice per hour, regardless of whether the vessel is fishing in one of the U.S./Canada Management Areas.

As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS would not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in either of the U.S./Canada Management Areas would also be required to fish with, and have on board only, either a flatfish net or a haddock separator trawl, which are defined in this proposed rule. NMFS has worked with gear experts in the industry to develop the proposed gear definitions and requests specific comment from the public on those definitions.

A cod trip limit within the U.S./Canada Management Areas of 500 lb (227 kg)/DAS, not to exceed 5 percent of the total catch on board, would be implemented for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits would be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits would go into place: Haddock: 1,500 lb (680 kg/day), 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. When 100 percent of a shared stock TAC is projected to be caught, the Eastern U.S./Canada Area would be closed to all fishing that may take cod, haddock, or yellowtail flounder by vessels capable of catching groundfish, unless a SAP allows some fishing in the area on a specific stock. The Western U.S./Canada Area would not be closed, but would have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

The U.S./Canada Management Area measures would remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, could adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments could be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In

addition, the Regional Administrator, in consultation with the Council, could withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time would remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

Other existing fisheries prosecuted in the U.S./Canada Management Areas would be unaffected by the Understanding measures, except that landings of GB cod, GB haddock, and GB yellowtail flounder caught in the U.S./Canada Management Areas would be counted against the Understanding TACs, regardless of gear type used.

14. SAPs

Amendment 13 would implement a process to develop SAPs, which are intended to facilitate access in closed or highly restricted areas to groundfish stocks that can support an increase in fishing mortality, and management of, and access to, non-groundfish stocks. The premise for SAP development is that specific fisheries can be developed that would not undermine achievement of the goals of the FMP, because some groundfish stocks are in better condition than others. A SAP would allow fishing for either regulated groundfish or species in other fisheries, without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies. A SAP would represent a narrowly defined fishery that would be prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH.

SAP Program Procedures

The proposed SAP program would define minimum criteria that would be utilized in the future to develop and implement SAPs. The proposed program is comprised of two parts: One that would define a process and standards for SAPs for the groundfish fishery, and a second that would define a process and standards for SAPs for non-groundfish fisheries. Under both proposed processes, in order for a SAP to be established, there would need to be sufficient information available to demonstrate that the SAP would not adversely impact efforts to control fishing mortality on groundfish stocks of concern; would, to the extent practicable, minimize bycatch; and would minimize, to the extent practicable, adverse effects on EFH caused by fishing. If that information is not available, the first step in getting authorization of a SAP would be collection of information necessary to demonstrate the feasibility of the SAP through an experimental fishery.

SAPs for Vessels Harvesting Groundfish

Amendment 13 proposed that implementation of SAPs for vessels harvesting groundfish could be through a framework adjustment or FMP amendment, using the proposed and final rulemaking procedures; or an expedited process in which the Council, or an industry participant or other member of the public could propose a SAP, which would then be reviewed and approved or disapproved by the Regional Administrator, in consultation with the Council, through publication in the **Federal Register**. This expedited approach is intended to allow more rapid implementation of a SAP than the framework action approach. In order to be approved under this process, the SAP must apply to a groundfish stock(s) for which the previous year's landings fell short of the TAC. The application must also demonstrate that the SAP will not catch more than the previous year's TAC shortfall, and that implementation of the SAP will not result in overfishing of any stock, or cause any stock to become overfished. This is intended to ensure that the biological impacts on the target stock fall within the range of the biological and economic impacts analyzed in Amendment 13. In order to demonstrate consistency with the goals of the FMP, the application would be required to specify the number of vessels that would participate in the SAP, and the estimated catch rates of the species to be harvested. The proposed SAP also could not modify any of the measures that minimize, to the extent practicable, the adverse impacts of fishing activity on EFH. This also is intended to ensure that any habitat impacts of the proposed SAP would fall within the range of the impacts analyzed in the FSEIS for Amendment 13. The proposed SAP, to be approved, could not increase fishing mortality on a groundfish stock of concern. This, too, is intended to ensure that the impacts of the SAP fall within the range of impacts analyzed in the FSEIS for Amendment 13. This could be accomplished in several ways: (1) By adoption of a limitation on catch of the stock of concern, for example through a specific TAC for that stock in the SAP, which would have to be adequately monitored through observer coverage; (2) by adopting gear or fishing techniques demonstrated to reduce or prevent the catch of the stocks of concern, including demonstration that the reduction is sufficient that any increase in time fishing (effort) will not increase the catch of a stock of concern beyond that which would result in the absence of the proposed SAP; and (3) by sufficient overall effort reduction or redirection to ensure that there is no net increase in bycatch mortality. Any SAP would be conducted within a defined area. Participation in the SAP could not be limited to vessels or individuals from a particular state or political subdivision. The SAP would be required to reduce discards and/or discard mortality of all species, to the extent practicable. In order for a SAP to be approved under the expedited process, it could not have significant impacts as defined by the National Environmental Protection Act (NEPA), or if the impacts are significant, these impacts would have to have been analyzed in the FSEIS for Amendment 13 or some later action. The proposed SAP would be required to specify the type of data reporting to be utilized to monitor the status of harvest, and should include a realistic plan of implementation. Finally, the Regional Administrator should take into account available enforcement resources and the enforcement record of vessel owners and operators of vessels that would participate in the SAP, to help ensure that adherence to the prescribed conditions of the SAP could be assured, if approved.

Under Amendment 13, if a SAP request is submitted to the Regional Administrator for approval through the expedited process, the Regional Administrator would: (1) Perform an initial review to ensure the required elements are present; (2) if all required elements are present, notify the Council of receipt of the SAP proposal within 21 days of receipt of the application; and (3) publish a notice in the **Federal Register** requesting comment on the SAP proposal within a 30-day comment period. After considering comments from the Council and the public, the Regional Administrator would make a determination on the proposed SAP and, if approved, issue a permit authorization for an exemption to existing regulations or promulgate new regulations, as appropriate, within 60 days of the end of the comment period. The expedited process could only be used if it is found to be consistent with the APA and other applicable law.

SAPs for Vessels Harvesting Non-groundfish Species

Implementation of SAPs allowing vessels to harvest non-groundfish stocks could be accomplished through a framework adjustment or FMP amendment, using normal rulemaking procedures, or through an expedited process similar to the process previously described for vessels harvesting groundfish. In order to demonstrate consistency with the goals of the FMP, the application for the proposed SAP would be required to estimate the catch rates of the species to be harvested.

Proposed SAPs

In addition to a proposed process for implementing SAPs in the future, Amendment 13 proposes four SAPs to be implemented as part of Amendment 13. Three of the SAPs would be available to vessels when fishing under their category B DAS (the CA II Yellowtail Flounder SAP, the CA II Haddock SAP, and the CA I Hook Gear Haddock SAP). The remaining SAP, the SNE/MA Winter Flounder SAP, would allow access to a limited amount of winter flounder outside of the DAS program. Descriptions of each of the proposed SAPs follows.

CA II Yellowtail Flounder SAP

This SAP would be intended to allow harvesting of GB yellowtail flounder. Vessels would be allowed to fish in the CA II Yellowtail Flounder SAP, using B DAS, under the following conditions and restrictions. From June 1 through December 31, vessels could make up to two trips per month into the CA II Yellowtail Flounder Access Area to target yellowtail flounder. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP would be subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS would not be counted until the vessel crosses the boundary into the Eastern U.S./Canada Area. In addition, vessels would be limited to 30,000 lb (13,608 kg) of yellowtail flounder per trip; the cod trip limit would be one fifth of the cod possession limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg) per DAS), not to exceed 5 percent of the total catch on board; and the total number of trips into the SAP in a fishing year would be limited to 320. The Regional Administrator would have broad authority to modify possession restrictions and trip limits under this SAP.

CA II Haddock SAP

This SAP would be intended to allow fishing for GB haddock. Vessels would be allowed to fish in the CA II Haddock SAP, using B DAS, under the following conditions and restrictions. From May 1 through February 28 (or 29 in leap year), vessels fishing under the provisions of this SAP could harvest GB haddock. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP would be subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS would not be counted until the vessel crosses the boundary into the Eastern U.S./Canada Area. Participating vessels would be subject to a cod possession limit of one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg)), not to exceed 5 percent of the total catch on board. The Regional Administrator would have broad authority to modify possession restrictions and trip limits under this SAP.

CA I Hook Gear SAP

This SAP would be intended to allow fishing for GB haddock. Vessels would be allowed to fish in the CA I Hook Gear SAP, using B DAS, under the following conditions and restrictions. From September 16 through December 31, vessels fishing under the provisions of this SAP could harvest GB haddock. Although this area lies outside of the U.S./Canada Management Area, vessels would be required to utilize a fully functional VMS when participating in this SAP. In addition, vessels would be restricted to 400 lb (181.4 kg) of cod per trip, and the area would close once 77,161 lb (35 mt) of cod is caught. Each vessel would be required to have an industry-funded observer on board when participating in this SAP.

SNE/MA Winter Flounder SAP

This SAP would be intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this proposed SAP, a vessel fishing for summer flounder west of 72°30′ W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS, would be allowed to possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessels must possess a valid Federal summer flounder permit; (2) the weight of winter flounder could not exceed the weight of summer flounder on board; (3) while in the program, the vessel could not fish on a groundfish DAS; (4) all fishing would have to take place west of 72° 30′ W. long.; and (5) possession and/or landing of other groundfish species would be prohibited.

15. EFH Measures

These measures would be intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 would designate portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, would also be relied upon to meet the EFH provisions of the Magnuson-Stevens Act. The list of fishing gears prohibited from use in the year-round closed areas would be expanded to include clam dredges. Use of shrimp trawls within closed areas would also be prohibited, except in the Western GOM Closed Area.

16. Reporting Requirements

Dealer Reporting

Dealers would be required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers would be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Implementation of electronic dealer reporting for all dealers may be accomplished through a separate rulemaking.

Vessel Reporting

Once a viable electronic system becomes available for reporting by vessels, that system would replace the current VTR system. Vessels would be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports would be required to be submitted at least at the current statistical area level of reporting. Vessels would have the option of using any approved, viable electronic means possible to report this information. The trip identifier would be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting would be

accomplished through a separate rulemaking.

17. Sector Allocation

Amendment 13 proposes a process for allowing a sector of the groundfish fishery to develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector could participate in. The intent would be to provide flexibility to the industry and to encourage stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under the proposed process, a self-selected group of groundfish permit holders could agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector could be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector would be allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desired. This could promote efficiency and reduce impacts of that portion of the fishery on habitat, for example. A primary motivation for the formation of a sector would be assurance that members of the sector would not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceeded their target TACs).

Formation of a Sector

Participation in a self-selecting sector would be voluntary. Vessels that do not choose to join a sector would remain in a common pool and would fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) would need to submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to compliance with general requirements described below and any analytical documents necessary to comply with NEPA. Should the Council and NMFS publish and ultimately approve the framework action, the sector would then be required to submit a legally binding plan of operations (operations plan) for the sector to the Council and to the Regional Administrator. The operations plan must contain at least the following: (1) A list of all parties, vessels, and vessel owners who will participate in the sector; (2) a contract signed by all sector participants indicating their agreement to abide by the operations plan; (3) the name of a designated representative or agent for service of process; (4) historic information on the catch or effort history of the sector participants, and any additional historic information specified in the framework adjustment; (5) a plan and analysis of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the sector rules and for the monitoring and reporting of landings and discards; (6) a plan that defines the procedures by which members of the sector that do not abide by the rules of the sector would be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector; (7) if applicable, a plan of how the TAC or DAS allocated to the sector will be assigned to each vessel; (8) if the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment, a supplemental NEPA analysis may be required with the operations plan. The sector and all participants in the sector would be jointly and severally liable for any violations of applicable Federal fishery regulations. Once the operations plan is deemed complete, NMFS would solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator would approve or disapprove the operations plan through publication of a final determination consistent with the APA. Approved sectors would be required to submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the sector.

Movement Between Sectors

Each sector would be permitted to set its own rules with regard to movement between sectors, which would be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel would be required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside the sector allocation in a given fishing year could not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules would not be eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

General Requirements for All Sector Allocation Proposals

Allocation of fishery resources to a sector would be based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 would be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector would be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations would be terminated for the remainder of the fishing year. If, in a particular fishing year the sector exceeds its TAC, the sector's allocation would be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year would not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP. The sector must submit an annual, year-end report to the Council and NMFS on the fishing activities of its members, including harvest levels of all vessels for cod and other federally managed limited access species, enforcement actions, and other information needed to evaluate the performance of the sector.

GB Cod Hook Gear Sector

One sector allocation proposal was developed sufficiently to be considered by the Council in Amendment 13. If approved, the GB Cod Hook Gear Sector would be allocated a maximum of 20 percent of the GB cod TAC for each fishing year. Participating vessels would be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, would be determined by calculating the percentage of all landings of GB cod

made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation would be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 would be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 would be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 would then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this would result in the percentage of the GB cod TAC for the next fishing year that would be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure would be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation would be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector would be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the year. Participating vessels could only harvest groundfish in the GB cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). No leasing of DAS would be allowed by participants in the sector during any fishing year of their participation. If the sector is approved in Amendment 13, the applicant would be required to submit its operations plan to the Council and NMFS for approval and public notification prior to its implementation. Because of this process, the GB Hook Sector could not be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, would not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants could join the sector at the beginning of a new fishing year, but once in the sector, a vessel would be required to stay in the sector through the remaining portion of the 5-year period.

18. Closed Area Rationale

When any new closed areas are adopted, the Council would define the intent and specific purpose for the closure and explicitly describe the duration of the closure, who can fish in the closed area, and who cannot fish in the closed area.

19. Frameworkable Items

Amendment 13 proposes that the following management measures could be adjusted through a framework action, in addition to those measures currently identified as framework measures in the FMP:

Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass;

DAS allocations (such as the category of DAS under the DAS reserve program), DAS baselines, etc.;

Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

Calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures;

Sector allocation requirements and specifications, including establishment of a new sector;

Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

Changes to administrative measures;

Additional uses for regular B DAS;

Future uses for C DAS;

Reporting requirements;

The GOM Inshore Conservation and Management Stewardship Plan;

GB cod gillnet sector allocation;

Allowable percent of TAC available to a sector through a sector allocation;

Categorization of DAS;

DAS leasing provisions;

Adjustments for steaming time;

Adjustments to the Handgear Only permits;

Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

SAP modifications; and

Anything else analyzed with respect to this action.

20. MSY Control Rules

An MSY control rule is intended to provide management advice to the Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, would be:

The F calculated to rebuild the stock to Bmsy in 10 years, when ½ Bmsy<B<Btarget. For Atlantic halibut, the MSY control rule would be: F = 0 until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 would adopt a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible. Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut. The proposed MSY control rules are contained in Amendment 13, but would not be codified in the regulations.

21. Overfishing Definitions

Amendment 13 would clarify and revise the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock would be considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing would be considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds would be increased to at least half of the target biomass levels. The proposed overfishing definitions are contained in Amendment 13, but are not codified in the regulations.

22. Target TACs

The management measures proposed in Amendment 13 are intended to achieve the target TACs shown in Table 2 for fishing years 2004, 2005, and 2006. The 2006 target TACs would remain in place through the remainder of the rebuilding program, unless otherwise modified through a future Council action.

TABLE 2.—TARGET TACS FOR FISHING YEARS 2004–2006, IN METRIC TONS

Species	Stock	2004	2005	2006
Cod	GB	3,949	4,830	6,361
	GOM	4,850	6,372	7,470
Haddock	GB	24,855	27,692	31,866
	GOM	4,831	4,735	4,642
Yellowtail flounder	GB	11,713	11,341	11,599
	SNE/MA	707	1,982	3,325
	CC/GOM	881	1,233	1,034
American plaice		3,695	3,625	3,015
Witch flounder		5,174	6,992	7,667
Winter flounder	GB	3,000	3,000	3,000
	GOM	3,286	2,634	2,205
	SNE/MA	2,860	3,550	4,445
Redfish		1,632	1,725	1,803
White hake		3,839	3,822	3,805
Pollock		10,584	10,584	10,584
Windowpane flounder	North	534	534	534
	South	285	273	262
Ocean pout		77	77	77
Atlantic halibut		NA	NA	NA

The proposed target TACs are not codified in the regulations.

23. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 would reduce the minimum enrollment requirement for five of the six existing fishery exemption/authorization programs from 30 days to 7 days, and would establish a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/authorization programs currently contain a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00′ N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00′ N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs would be revised by Amendment 13 and would also have a 7-day minimum enrollment requirement. The original intent of the 30-day minimum enrollment requirement was to increase the enforceability of these programs. However, due to advances in technology and the increased use of VMS by commercial fishing vessels, NMFS has concluded that the 30-day minimum enrollment requirement is no longer necessary for enforcement purposes. Members of the fishing industry and the Council have requested that NMFS reduce the 30-day minimum enrollment requirement in order to provide them with more flexibility with regard to their fishing practices.

24. Policy on Cooperative Research

Because allocation of DAS is based on a vessel's historical DAS use, Amendment 13 would establish a policy that a vessel would not lose allocated DAS due to its participation in a research project or experimental fishery, if that participation can be adequately documented. If a permit holder believes that allocation of DAS under Amendment 13 has been limited by the vessel's participation in a research project or experimental fishery, the permit holder could provide to the Regional Administrator documentation to substantiate the time the vessel spent participating in a research project(s) that was not considered in Amendment 13 DAS allocation. The Regional Administrator would consider such requests on a case-by-case basis, review the information submitted, and consider adjusting that vessel's DAS allocation accordingly.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on several proposed measures for which the agency has concern, particularly regarding whether the measures are consistent with achieving the mortality reduction objectives and whether there is sufficient analysis in the FSEIS to support the proposed measures. A description of these measures follows.

SAPs

Amendment 13 proposes four SAPs: The CA II Yellowtail Flounder SAP; the CA II Haddock SAP; the CA I Hook Gear Haddock SAP; and the SNE/MA Winter Flounder SAP. For two of these SAPs, the CA II Haddock SAP and the CA I Hook Gear Haddock SAP, the Amendment 13 document appears to lack sufficient analysis to determine the impacts of these programs. For the CA II Haddock SAP, the document states that there is no recent information available on catch rates of groundfish or other species inside the area. The document further cautions that recent VTR data from the area adjacent to the CA II Haddock SAP indicates that, for most months, vessels reported landing more cod than haddock, on a per trip basis. Although Amendment 13 would implement a haddock separator trawl gear requirement in this area (trawl gear that is expected to reduce cod bycatch), there may not be enough data at this time to justify access to this area, given the need to keep fishing mortality on GB cod low.

An experimental fishery is currently being conducted to determine whether a directed hook-gear fishery for haddock in CA I could be developed that would have very low bycatch of GB cod. However, the experiment has not been completed, and the data are of limited temporal scope, so there is little information on whether or not a directed hook fishery for haddock in CA I could avoid GB cod catches throughout the year. Amendment 13 also proposes 100-percent observer coverage for this SAP, but does not state

how this would be accomplished. The costs for 100-percent coverage could be very high, and lower coverage levels would likely accomplish the same objectives.

Prohibition on Surfclam and Ocean Quahog Dredge Gear in Groundfish Closed Areas

Amendment 13 proposes to exclude clam dredge gear from the NLCA, the Cashes Ledge Closure Area, and the Western GOM (WGOM) Closure Area to protect EFH for groundfish. There are seven EFH Closure Areas proposed under Amendment 13. One of the EFH Closure Areas, the Nantucket Lightship Habitat Closure Area, lies within a large portion of the NLCA and extends northward of this area. The proposed Cashes Ledge Habitat Closure Area is located within the existing Cashes Ledge Closure Area, with the exception of the northeast corner of the habitat area, and the proposed WGOM Habitat Closure Area almost fully encompasses the existing WGOM Closure Area. Amendment 13 proposes to exclude hydraulic clam dredges from the EFH Closure Areas. However, restricting clam dredge gear from the EFH Closure Areas within areas already closed exclusively to protect groundfish may be problematic, in that there appears to be little rationale provided for this measure.

Exemption to Allow Shrimp Trawl Gear in the WGOM Closure Area

Amendment 13 would create Level 3 Habitat Closures for the proposed EFH Closure Areas, except that, for the WGOM Habitat Closure Area, shrimp trawl gear would be allowed. NMFS is concerned that allowing shrimp trawl gear to be used in the WGOM Habitat Closure Area could compromise effectiveness of this habitat closure. Furthermore, there appears to be little justification in Amendment 13 to support this exemption.

Abbreviated Process to Implement SAPs

Amendment 13 proposes an abbreviated process to implement future SAPs, whereby the Regional Administrator would be given the authority, upon submission and review of a proposed SAP by a member of the public, to implement this program, provided certain conditions are met. The SAP could only be considered if it falls within the range of impacts analyzed in Amendment 13 or ''other'' management action. Since the only SAPs that appear to have been fully analyzed in Amendment 13 are the CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP, and assuming that ''other'' management actions would analyze proposed SAPs, this authority appears to be unnecessary. Amendment 13 would provide for SAPs to be approved through the framework adjustment process. The framework process may be a more appropriate vehicle for consideration of proposed SAPs than the proposed abbreviated process for SAP implementation.

Proration of DAS

If Congress approves H.R. 2673, the Omnibus 2004 Appropriations bill, with the current provisions regarding the New England groundfish (sec. 105.(a) and (b)), implementation of Amendment 13 would be delayed until at least October 1, 2004. Because this proposed rule is designed for a May 1, 2004, implementation, which coincides with the beginning of the fishing year, an October 1, 2004, implementation would fall in the middle of the fishing year. If implementation were delayed, some of the management measures and analyses thereof described in this proposed rule may require modification in order to take into account the new date of implementation. DAS allocations would need to be prorated to take into account DAS already used in the 2004 fishing year, issuance of limited access Handgear A permits would be delayed, and there would be complications regarding certain aspects of implementation of the SAPs, the U.S./Canada Understanding TACs, the GB Cod Hook Sector Allocation, and the DAS Leasing Program.

Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a DEIS for the EFH components of Amendment 13; a notice of its availability was published on April 4, 2003 (68 FR 16511). A notice of availability of the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018); a correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

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

NMFS, pursuant to section 603 of the Regulatory Flexibility Act (RFA), prepared this initial regulatory flexibility analysis (IRFA) as a supplement to the Council submission of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities.

The Council, in its submission, included a Regulatory Flexibility Act Analysis (RFAA) in support of the proposed action. In this analysis, the baseline (no-action alternative) is the set of measures that were in place prior to the first set of interim measures implemented under the settlement agreement (*i.e.,* FY 2001 fishing measures). The use of this baseline was adopted by the Council. Copies of Amendment 13, which includes the Council's RFAA, can be obtained from the Council (*see* **ADDRESSES**). Tables and sections that are referenced in this IRFA refer to those contained in Amendment 13. A description of the reasons why this action is being considered is found in the preamble to this proposed rule, the Executive Summary and Section 1.0, Volume 1, of Amendment 13. The objectives of, and legal basis for, the proposed rule are found in the preamble to this proposed rule and Section 1.0, Volume 1, of Amendment 13. There are no federal rules that may duplicate, overlap, or conflict with the proposed rule.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed action would implement changes affecting any vessel holding a limited access groundfish permit, an open access hand gear-only permit, and vessels that hold an open access party/charter permit. Based on fishing year 2002 (FY2002) data the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 hand gear permits, and 685 party/charter permits. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a hand gear or a party/charter permit was 2,250 of which 1,565 held only a hand gear permit, 306 held only a party/charter permit, and 379 held both a hand gear and a party/charter permit. The SBA size standard for small commercial fishing entities is $3.5 million in gross receipts while the size standard for small party/charter operators is 100 employees. The commercial fishing size standard would apply to limited access permit holders as well as open access hand-gear only permits. Available data based on 1998–

2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was $1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial fishing entities, there would be no disproportionate impacts between small and large entities.

Economic Impacts of Proposed Action

Recreational Measures

The proposed action would implement a 10 cod/person/day bag limit for private recreational vessels and party/charter vessels in the GOM and a minimum size for cod 22 inches (55.9 cm) and haddock 19 inches (48.3 cm). This would relax current restrictions on the bag limit for Gulf of Maine party/charter passengers and would permit passengers to retain a two-day equivalent of the daily bag limit on trips that take place over two calendar days and that are at least 15-hours in duration. These measures would affect any vessel that chooses to take passengers for-hire in the Gulf of Maine where cod are caught. While there are a large number of vessels that hold a party/charter groundfish permit, there have only been about 120 vessels that have actually reported landing Gulf of Maine cod when taking passengers for hire. Of these vessels, the majority earn at least 75 percent of fishing income from passenger fees. Although the impact of a relaxation of the bag limit cannot be estimated using available data there is little doubt that the higher bag limit will be more attractive to party/charter customers which should result in higher passenger loads and an overall improvement in party/charter business profits.

Commercial Measures

Measures to Address Stock Rebuilding Requirements

The proposed action would implement both a change in baseline DAS allocations and a number of management measures that would affect the manner in which available DAS allocations may be used.

The Settlement Agreement assigned baseline DAS allocations based solely on DAS that had been called-in during fishing years 1996 to 2000 and granted a minimum allocation of 10 DAS to all limited access permit holders. The proposed action would change this baseline by adding FY2001 to the qualification period but would also require that only years in which at least 5,000 pounds of regulated groundfish would count toward qualification. Vessels that either called in no DAS at all or never landed more than 5,000 pounds in a single year would receive a baseline allocation of zero although their full pre-settlement agreement allocation would be placed in Category C DAS.

Preliminary analysis of the proposed action indicates that the majority (599) of vessels would see no change in their effective effort baseline, while 272 vessels would receive a higher allocation than their Settlement Agreement baseline. However, 52 vessels would have a lower baseline and 519 vessels would receive a zero baseline allocation. Of the vessels with a zero baseline, 394 were vessels that had received a minimum allocation under the Settlement Agreement and 125 were vessels whose baseline allocation was more than 10 DAS.

In effect, the proposed action places greater weight on providing for continued participation in the groundfish fishery to those vessels that may be comparatively more active and that may be more dependent on the groundfish fishery for business income. That is, reducing the potential pool of qualifying DAS makes it possible to achieve the same conservation objective with a lower DAS reduction to all remaining vessels that will receive a baseline allocation.

Vessels that receive no baseline allocation in FY2004 would not be able to fish for regulated groundfish until all stocks have been rebuilt and all Category B DAS have been converted to Category A DAS. While this prohibition may not have an immediate impact on fishing income (*i.e.* vessels that received no allocation have either not participated in the groundfish fishery over a five-year period or did participate but at a very low level) but a loss of DAS does mean that the equity value of the business would be reduced. A loss in equity would affect the resale value of the vessel and may affect the ability to obtain business loans.

A total of 923 vessels would receive a non-zero baseline allocation; approximately the annual average number of vessels that have participated in the groundfish fishery since 1996. For these qualifying vessels the action would have no affect on economic opportunities for the 519 vessels with no change in baseline DAS. It would increase economic opportunity for 272 vessels, while 52 boats with DAS allocations receive lower allocations. Approximately 500 vessels will receive zero DAS.

Since all entities were deemed to fall under the SBA size standard for small commercial fishing entities, disproportionality does not apply as a standard against which small entity impacts would be compared to large entity impacts. Nevertheless, in section 5.4.4, revenue impacts were estimated for several different vessel categories including total value of groundfish sales where groundfish sales classes were broken into four intervals based on quartiles of the distribution of 1998–2001 average groundfish sales for participating vessels. The findings in section 5.4.4 indicate that relative changes in total fishing income would have lower impact on vessels with total groundfish sales of less than $35,000. Overall, vessels with the highest groundfish sales, as opposed to those with lower sales, may be expected to be more affected by Amendment 13 management measures. However, the proposed action would have lower revenue impact than any of the non-selected alternatives. To examine whether the proposed action would have impacts based on total sales, the revenue impacts were summarized by gross sales intervals where intervals were established as the quartiles of the distribution of 1998–2001 average gross sales. Due to differences in dependence on groundfish and normal fishing patterns, these total revenue losses are not equally distributed across all vessels. In fact, revenue changes were found to be quite skewed, which means that reporting average or even median vessel impacts fails to identify the full range of revenue losses across the groundfish fleet. For this reason, revenue impacts are reported for the 10th, 25th, 50th (median), 75th and 90th percentile of the distribution of impacted vessels sorted in ascending order from most negatively to least impacted vessel (Table 184). Each percentile forms an interval that represents a specific number of vessels as well as the lower and upper range of impact on vessels between percentiles.

Relative changes in total fishing revenues were not markedly different across all sales intervals at least among the 55 most impacted vessels in each sales interval, although the estimated impact at the 10th percentile was greatest (−44.7 percent) for vessels with sales less than $65,000 (Table 369). However, revenue impacts on the remaining 150 or so vessels in this sales category were generally lower and were even positive for some vessels as compared to vessels with higher gross sales. In fact, the overall impact was

generally most burdensome on vessels with highest gross sales ($300,000 or more). Note that these estimated impacts would be higher for all sales intervals for any of the non-selected alternatives versus the no-action alternative. Based on the estimated changes in gross fishing revenue, the proposed action would have higher impact on vessels with highest total sales and would not, therefore, have a disproportionate impact on vessels with smallest total sales.

Change in gross revenues provides an incomplete picture of the impact of the proposed action on vessel profitability, making it difficult to determine whether any given vessel may cease business operations. Unfortunately, while available data permit tracking landings and revenues by vessel, no comparable data collection system exists to collect a comprehensive set of operating, fixed, and debt service costs for the groundfish fleet. This means that it is not possible to directly provide a reliable numerical estimate of current profit levels or how many vessels may not be able to remain profitable once the Proposed action is implemented. However, a relative measure of profitability change and percent of possible business failures was estimated by simulating vessel costs and returns by using a combination of the cost data developed for the break-even DAS analysis (*see* Section 4.4.5), available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. A Monte Carlo simulation was then run using 1,000 iterations to produce 1,000 different possible financial profiles or equivalent profit levels for each gear and size class developed for the break-even analysis. By simultaneously simulating a baseline scenario and the Proposed action (the baseline groundfish days absent reduced by 45 percent) each realization produces a paired estimate of profit for the baseline and the Proposed action. In this manner, groundfish revenue is directly linked to the DAS reduction but so too are the operating cost savings associated with a reduction in groundfish effort. For calculations used to estimate profitability, *see* section 7.3.3.7.2.

The potential business failure rate ranged from 25 to 35 percent for small vessels using long-line gear depending on debt levels (Table 371). For vessels that may remain above break-even, median reduction in profit level ranged from 47 percent to 56 percent for vessels with no debt and high debt respectively. Across all vessels, reductions in profit levels could exceed 80 percent while some vessels may experience more modest changes in profitability (between 8.0 and 25 percent depending on debt level). Available data does not make it possible to determine the mix of small long-line vessels by debt level. However, assuming a medium debt level represents a fleet average, 17 out of a total of 51 small long-line vessels (*see* Table 175 for total vessels by size-gear groupings) may be expected to cease business operations.

Larger long-line vessels had higher overall fishing revenues in FY2000 than small long-line vessels, but also had higher estimated costs. These costs represented a small overall increase in proportion to increases in total fishing revenues which means that business failure rates for these vessels are likely to be lower. Failure rates were estimated to range from a low of 9 percent for vessels with no debt and a high of 15 percent for vessels with high annual debt payments (Table 372). Median estimated reduction in profit level was also lower than small long-line vessels but still exceeded 37 percent, regardless of debt level. At the medium debt failure rate, a total of 3 of 24 large long-line vessels may cease business operations under the Proposed action.

Business failure rates for small gillnet vessels may range from 19 to 24 percent depending on debt level (Table 373). Median reduction in profit would be about 35 percent, but may be much higher (more than 80 percent) for some vessels or may be less than 1 percent for others. Assuming a medium debt failure rate, 14 of 63 small gillnet vessels may be expected to cease business operations.

As was the case for larger hook vessels, larger gillnet vessels had higher overall fishing revenues but costs were not higher by the same proportion. For this reason, failure rates for large gillnet vessels were somewhat lower (from 15 to 21 percent) than for small gillnet vessels (Table 374). However, potential reductions in profit levels for vessels that would still be above break-even may be higher for large, as compared to small gillnet vessels. Specifically, median profit reduction may be at least 50 percent; about 15 percentage points greater than estimated median impacts on small gillnet vessels. Using the medium debt level failure rate, a total of 23 of 118 large gillnet vessels may be expected to cease business operations.

Small trawl vessels (less than 50 feet in length) may have business failure rates between 27 and 33 percent depending on level of debt payments (Table 375). Median losses in profit levels for vessels that may still be able to break-even may be between 50 and 60 percent with some vessels experiencing much larger reduction in profitability (90 percent or greater for vessels with high debt), while others may experience much lower reductions in profit. Assuming that medium debt is consistent with a fleet average, about 55 of 187 small trawl vessels may go out of business under the Proposed action.

The business failure rate for medium trawl vessels was estimated to range between 18 and 27 percent (Table 376). This failure rate was lower than that of small trawl vessels suggesting that these vessels may be able to take advantage of economies of scale which makes them somewhat more resilient to adverse economic conditions. Median reduction in profit level ranged within a narrow interval of from 45 to 48 percent. Based on the medium debt failure rate, 48 of 218 trawl vessels would not be able to remain in business after Amendment 13 is implemented.

Large trawl vessels had the highest debt levels and generally had higher trip and fixed costs than any other vessel size or gear category. These higher costs were not offset by proportionally higher revenue which tends to produce lower profit margins than other vessel gear/size classes. For this reason, the estimated business failure rate (between 31 and 43 percent) was the highest for large trawl vessels (Table 377). Similarly, reductions in profit, as measured at the median, were also generally higher (53 to 61 percent) as were reductions in profitability for both the most affected and least affected vessels. Applying the medium debt failure rate to the 187 large trawl vessels included in the economic analysis in Section 4.4.4 results in a potential for 68 business failures.

Discussion

Based on the above analysis, a total of 228 vessels of varying sizes and gear groups may not be able to remain in business under the proposed action. This estimate was based on the assumption that all vessels had a medium level of debt and may range from 190 to 260, depending upon which debt level best represents a fleet-wide average. These estimates are also contingent on the extent to which the simulated cost and returns reflect actual financial conditions in the groundfish fleet. Unfortunately, not enough cost data, particularly on fixed costs and debt payments, has been collected to evaluate the veracity of these results.

This difficulty aside, the profitability analysis did not take into account differences in potential revenue generation that may exist for vessels that fish predominately in the Gulf of Maine, as compared to elsewhere. The analysis also does not account for differences in how area closures may affect vessels, particularly small as compared to large vessels. Finally, the analysis only took into account the potential effort reduction associated with the expected use of Category A DAS.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The proposed action contains a number of measures that would provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional ''B'' DAS, leasing of DAS, DAS transfer, and sector allocation. As designed, the proposed action would achieve target fishing mortality rates for most stocks but would achieve higher then necessary reduction for others.

Category B DAS

Category B DAS would be subdivided into two categories, one which would be used in Special Access Programs (reserve B DAS), while the use of the remaining B days or Regular B DAS will be determined in a Framework Action. The primary purpose of B DAS is to provide access to and increased yield from stocks that may be fished at higher levels. These opportunities would enhance profitability for vessels that may be able to participate in any one or more of these special fisheries.

DAS Leasing or Transfer

Particularly for vessels with few alternative fisheries, reductions in profit may be offset by the ability to acquire more DAS either through leasing or DAS transfer. The former would make DAS available to a vessel for a single fishing season whereas the latter would be a permanent transfer of DAS from one vessel to another. Transferred DAS would be subject to a 40-percent conservation tax on the transfer, but vessels would be able to acquire both Category A and Category B DAS. By contrast, a DAS lease would not be subject to a conservation tax but vessels would be only allowed to acquire Category A DAS. It is not known which option any given vessels may choose to pursue, but analysis clearly suggests that making DAS available in some form of exchange can improve overall profitability for both buyer and seller. The following describes this analysis.

The economic impact of a DAS leasing program was estimated by simulating a quota market using a math programming model. The model maximized industry profits by choosing the days each vessel will fish (if any) of their own allocation, days they will lease from other vessels, and the number of their days they will lease to other vessels. Each vessel can only fish a maximum number of days at sea, which is the sum of their days and their FY 2001 allocation. Days fished above their allocation of days must be leased from other vessels. In the model, vessels were constrained to be either a lessee or lessor, although in a real world situation a vessel could be a lessee and a lessor simultaneously. Restrictions were placed on the model which did not allow days to be leased by larger vessels from smaller vessels, which were consistent with the restrictions passed by the Council. Results from the model yielded a very efficient outcome in terms of maximizing industry profit with as few vessels as possible. In reality, the actual leasing of DAS among industry participants may not be as profitable as projected by the math programming model. An individual vessel's activity level chosen by the model is determined by its productivity, the maximum allowable days it can fish, the lease price for days at sea, daily fishing costs, and the prices of each species, and a restriction which prohibit leasing of days from smaller vessels by bigger vessels. The model doesn't differentiate between areas fished, where vessels land their fish, and a variety of other factors that will influence the amount of DAS leased, including other fisheries in which the vessel can participate, and it assumes perfect information among participants.

Vessels were grouped together regardless of gear type, and then stratified into fleets of 100 vessels. Each fleet was then paired with itself, and then with every other fleet to simulate trades between all 1,345 vessels which could potentially lease quota. For each sector pair, the model was run 50 times in order to incorporate a stochastic lease price, which was generated based on results from a previous LP model. Lease prices used in the model ranged from $218 to $2,093, with a mean of $1,029. Results from the simulations were used to examine changes in profitability which would occur from allowing days at sea leasing.

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 feet; class 2 vessels were between 50 and 69 feet, and class 3 vessels were 70 feet and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease days at sea, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish (Table 378). However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation (Table 379). Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels which choose to lease all their quota can greatly enhance their profit since the owner is getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs. The decision from a vessel perspective on whether to lease quota to other vessels is based on whether they can lease their quota for more then they would earn after paying expenses including payments to the crew. If a vessel decides to lease quota from other vessels, it is based on whether they can earn more from a leased day at sea than what they will pay for the lease plus what they will pay to the crew, and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 feet in length were projected to use more days at sea than in 2002 under a DAS leasing scheme (Table 380). Trawl and gillnet vessels greater than 50 feet saw their days at sea usage decline from 2002 levels. Hook vessels were projected to see their days at sea increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. Examination of both tables 378 and 379 show that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was $68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was $31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was $41,111 using 31.9 days of effort under days at sea

leasing, while their 2002 average profit was $12,271, and their average days at sea was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

Additionally, the average profit levels were projected to be higher under DAS leasing than if the vessels fished at their allocated 2004 levels. This demonstrates DAS provides substantial regulatory relief to vessels compared with no leasing (no-action alternative).

Hand Gear A Permit

The proposed action would convert the existing open access hand-gear permit into a limited access category and an open access category Handgear A permits. Vessels that qualify for a limited access permit would benefit from a relaxation of the cod trip limit and would not be subject to trip limits on any other species. Vessels that do not qualify for limited access would still be able to obtain an open access permit but the cod trip limit would be much lower than current hand-gear only permit holders may retain. Available data show that even though a large number of open access hand-gear permits have been issued in the past not much more than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels would qualify for a limited access hand-gear A permit which just about as many vessels with documented landings in any given year since 1997. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The no-action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no-action.

Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery

The northern shrimp fishery would no longer be restricted to the area shoreward to the small mesh fishery exemption line. All other restrictions remain in effect. The elimination of the line will increase potential economic benefits for shrimp fishermen without harm to the multispecies stock. Recent studies have shown that with other devices such as the Nordmore grate, bycatch of regulated multispecies is minimal. The no-action alternative would yield no economic benefits and would not change the economic conditions in the shrimp fishery. Therefore, the proposed alternative is favorable when compared to the no-action. For further detail of the economic impacts relating to the measures *see* section 5.4.11.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

Tuna purse seine gear is defined as exempted gear for the purposes of the multispecies FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This would benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the multispecies fisheries. For further detail on the economic impacts of the proposed alternatives, *see* section 5.4.10.

Southern New England General Category Scallop Vessel Exemption Program

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in 648.10, or that have used up their DAS allocations, and vessels issued a general category scallop permit, may fish in the statistical areas 537, 538, 539, and 613—defined as the Southern New England General Category Scallop Exemption Area—when not under a NE multispecies DAS. This would relieve a restriction and allow scallop vessels to enter expanded areas for the harvest of scallops, relieving a restriction and allowing those vessels to increase profits, if available (*see* section 5.4.12). The no-action alternative would yield no economic benefits because vessels would be precluded from participating in this program. Therefore, the proposed alternative is favorable when compared to the no-action.

Modified VMS Operation Requirement

A vessel using a VMS can opt out of the fishery for a minimum period of one calendar month by notifying the Regional Administrator. Notification must include the date a vessel will resume transmitting VMS reports. After receiving confirmation from the RA, the vessel operator can stop sending VMS reports. During the period out of the VMS program, the vessel cannot engage in any fisheries until the VMS is turned back on. This would reduce operating costs associated withVMS operation (*see* section 3.4.11). The no-action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action.

Observer Coverage Level Adjusted by NMFS

No later than 2006, NMFS would determine if a 10 percent level of observer coverage is sufficient to monitor catches and discards in the groundfish fishery with an acceptable level of precision and accuracy. The level of observer coverage will be adjusted (increased or decreased) consistent with that analysis. The present cost for a NMFS-approved observer is estimated to be $1150 per day at sea. Based upon the analysis conducted by 2006, costs associated with the observer coverage program may increase or decrease.

Revised Standards for Certification for Bycatch/Exempted Fisheries

The standards for certification of a bycatch/exempted fishery that were implemented through Amendment 7 would continue to be used. However, this measure would allow the RA to modify the 5 percent bycatch rule and make additional modifications on a one-to-one basis under an accepted set of conditions. The economic benefits or costs are uncertain with this measure since the RA could decrease the percentage used in the bycatch rule as well as increase it. However, the measure seems to be intented to allow a very controlled expansion of fishing areas, thus, benefitting vessels economically while conserving critical species. The effect of the no-action alternative would depend on the Regional Administrator's determination on a case-by-case basis, *e.g.*, if the RA lowered the acceptable bycatch percentage, the no-action alternative would have a beneficial impact, but if the acceptable bycatch percentage was increased, the no-action would have a negative impact.

Flexible Area Action System (FAAS)

The FAAS would be eliminated under the proposed action. This system has not been used in recent years and its elimination should have no economic impact on multispecies vessels.

Periodic Adjustment Process

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every two years. This would tend to have a positive effect on profitability of individual vessels since it would

expand their planning horizon making their fishing operations more efficient and profitable. The no-action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action.

U.S./Canada Resource Sharing Understanding

Management of Georges Bank cod, haddock, and yellowtail flounder would be subject to the terms of the United States/Canada resource sharing agreement. The agreement specifies an allocation of Georges Bank cod, haddock, and yellowtail flounder for each country. The management objective is for the shared cod, haddock, and yellowtail flounder to achieve, but not exceed the U.S. allocation fraction. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish Georges Bank. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on Georges Bank, thus, increasing the profitability of individual vessels engaged in the fishery (*see* section 5.49.2.3). The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

Sector Allocation

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS) with target TACs specified for each sector. Vessels within the sector would be allowed to pool harvesting resources and consolidate operations in fewer vessels if they desired. One of the major benefits of self selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the formation of a sector is assurance that members of the sector would not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector since they would be able to better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, this Amendment creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no-action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action. For additional detail on the economic impacts of the proposed alternatives see section 5.4.9.3.

GB Hook Sector

The proposed action would create a voluntary sector for longline/hook vessels on GB. This provides an opportunity for vessels to mitigate the impacts of the management alternatives. By organizing into a cooperative, vessels may be able to develop more efficient ways to harvest groundfish and minimize the inefficiencies that result from the regulations. While it is not possible to estimate the economic impacts of a sector until the actual participants are known, the pool of participants will probably be the vessels that have used longline gear to fish on GB in the past.

For fishing years 1996 through 2000, 182 vessels reported using longline gear to catch GB cod. This alternative also includes access to CAI to harvest haddock. From 1996 through 2000, 44 hookvessels reported landing GB haddock, roughly one-fourth of the total number that reported landing GB cod. Allowing access to CAI for vessels that choose to participate in the sector may increase the ability of these vessels to target GB haddock, further mitigating the impacts of the rebuilding programs.

Frameworkable Items

The Council has submitted, for approval, a number of items to be frameworkable. There are no economic impacts from this measure. However, each future framework action would need to contain an analysis of economic impact when applicable.

Measures To Minimize Adverse Effects of Fishing on EFH

The proposed action would implement habitat closed areas that are modifications of existing closed areas (Alternative 10B). For all VTR records retained for analysis, the total estimated gross revenue from all species reported during calendar year 2001 was $296.3 million. The proposed Level 3 habitat closure would allow stationary bottom tending gear and mid-water trawl gear to continue to fish in a closed area. As a result, total revenues earned by vessels using these gears would not be reduced. The revenue losses from prohibiting bottom tending mobile gear in a Level 3 closure ranged from 8.1 percent (Alternative 5b) to 0.5 percent (Alternatives 6, 10A and 10B) (Table 295). Compared to the effects from a Level 1 closure where all fishing is prohibited, the revenue losses for the remaining alternatives were 1 to 2 percent lower. However, revenue losses for some specific species groups were substantially reduced. Since a large proportion of monkfish are landed with gillnet gear the Level 3 closure would mitigate a substantial proportion of estimated monkfish revenue losses associated with a level 1 closure. Similarly, revenue losses for the ''other'' species group would be mitigated under a Level 3 closure because a significant proportion of these revenues are comprised of lobster landings from trap gear. Revenue losses for groundfish would be partially offset by a Level 3 closure since gillnet and hook segments of the groundfish fishery would not be affected. However, bottom trawl gear accounts for the majority of groundfish effort, hence, groundfish revenue losses would still range between 9 and 14 percent for all gear for all alternatives except Alternatives 6, 10A, and 10B. Since a Level 3 habitat closure does not provide any relief to fisheries using mobile bottom-tending gear the share of revenue impact for fisheries that are dominated by these mobile gears increases relative to other fishery impacts. The surf clam/ocean quahog fishery would be impacted by a 0.9 percent revenue loss. The surf clam/ocean quahog fishery would further be impacted since under proposed Alternative 7 since surf clam/ocean

quahog dredges would not continue to be exempted from regulations prohibiting the use of that gear in multispecies closed areas. Therefore, while short-term revenue losses are estimated to be 0.9 percent there may be longer term impacts which cannot be estimated until further closures are undertaken.

In addition to Alternatives 7 and 10b, the Council has also adopted Alternative 2 to address impacts of fishing on EFH. There are no anticipated economic impacts resulting from the selection of Alternative 2. This Alternative relies on the habitat benefits of other non-habitat related management measures implemented through Amendment 13 to meet the EFH provisions of the Magnuson-Stevens Act. The No-Action alternative would increase profitability for those vessels prohibited in closed areas when compared to the proposed action which restricts fishing in those areas. Affected gear types include clam dredges and bottom trawl gear.

Economic Impacts of Alternatives to the Proposed Action

This section describes the impacts of management measures that were considered by the Council but were not adopted as part of Amendment 13. Unless otherwise stated, these impacts compare the economic results of the measure compared to the baseline period.

Recreational Measures

Two alternatives to the preferred action were considered: the status quo (settlement agreement measures) and a measure featuring a trip bag limit for cod with a closed season.

Under the status quo settlement agreement measures, charter/party operators would be directly affected by the enrollment requirement. The enrollment program would remove the possibility of charter/party vessels switching back-and-forth between commercial fishing and carrying passengers for hire for those vessels that still want to be able to take recreational passengers into any one of the rolling closure areas. Vessels that forego the exemption program would still be able to switch between commercial and recreational activities, but may sacrifice some charter/party business to competitors if catch rates are actually higher, or even perceived to be higher, inside the closed areas. Given the increase in the minimum size limit, charter/party vessels may experience a reduction in passenger demand. However, the minimum fish size increase will have a relatively small effect on charter/party keep opportunities. Following implementation of the minimum fish size increases in 1996 and 1997, passengers and trips have increased on charter/party vessels. Further, among alternative management measures, size limits are generally supported by the recreational fishing public. Therefore, the change in minimum size would not seem likely to result in a substantial reduction in passenger demand for charter/party trips in the GOM or GB.

The status quo alternative would retain a bag limit on charter/party anglers fishing for Atlantic cod in the GOM. Industry representatives have indicated in the past that passenger demand is, in part, driven by angler expectations, and that one important component of angler expectations is the opportunity to have a ''big trip.'' As the argument goes, even though these expectations are realized on only a small fraction of trips, imposition of a bag limit would cause individuals to lose interest in taking a charter/party trip. The extent to which anglers would respond in the manner described is not known, nor have there been any studies that document angler response to changes in charter/party bag limits.

The third alternative would increase the minimum size of cod, reduce the minimum size of haddock, prohibit fishing in the Gulf of Maine from December through March, and implement a 10 cod/trip limit. While the reduction in the haddock minimum size would represent a potential increase in economic benefits this option would yield smaller economic benefits than the proposed action due to the closed season.

From 1995–2000, an average of 72.7 percent of vessels that reported taking party/charter groundfish trips made 100 percent of their fishing income from party/charter operations conducted in the groundfish fishery. The remaining 27.3 percent earned income from other fishing activities. About ten percent earned less than 50 percent of their fishing income from party/charter operations. These vessels could be commercial vessels that are taking party/charter trips to compensate for reduced income from commercial fishing or to maintain a year-round income during times of area closures. The communities most likely to be impacted by these measures are those that are adjacent to Gulf of Maine closure areas and those in which the most party/charter vessels are homeported. These communities are Gloucester and the North Shore of Massachusetts, Portsmouth and the NH Seacoast, southern Maine, and the South Shore of Massachusetts.

Management Alternatives To Address Rebuilding Requirements

The Council considered 4 stock rebuilding alternatives to the proposed action: Up to a 65 percent reduction in DAS; a reduction in DAS with gear modifications; area management; and a hard TAC alternative.

Alternative 1—Up to a 65 Percent Reduction in DAS

Alternative 1 contains two different proposed DAS use levels and two different trip limit alternatives for GB Cod. Alternative 1A has a DAS use of 28,400 days and a Georges Bank cod trip limit of 2,000 pounds per DAS, up to 20,000 pounds per trip. Alternative 1B has the same GB cod trip limit, but would reduce DAS use to 41,050 in the first year, with used DAS declining to 22,100 DAS in the fourth year after implementation. Alternative 1C would have the same DAS use as 1A, but would implement a GB cod trip limit that would vary by gear and season. Similarly, Alternative 1D would implement the same GB cod trip limit as 1C but would reduce DAS use to the same level as 1B. Alternative 1A would result in an estimated reduction of $45.6 million in total fishing income, while Alternative 1B would result in an estimated reduction of $28.3 million in the first year. Due to a more restrictive GB cod trip limit, Alternative 1C would result in an estimated reduction in total fishing revenues of $49.1 million and Alternative 1D would result in a reduction of $33 million.

Vessel-level impacts are not uniformly distributed with some vessels being much more impacted than others. Because of the tendency for revenue impacts to be skewed, revenue impacts are reported for the 10th, 25th, 50th (median), 75th and 90th percentile of the distribution of impacted vessels sorted in ascending order from most negatively to least impacted vessel (Table 192). Each percentile forms an interval that represents a specific number of vessels as well as the lower and upper range of impact on vessels between percentiles. For example, since there are 848 vessels included in the analysis, there are 85 (rounding to the nearest whole number) vessels at or below the 10th percentile. Gross revenues for these vessels would decline 46.3 percent or greater for Alternative 1A, but would decline 29.8 percent or more for Alternative 1B. Similarly, the revenue loss for the 127 vessels between the 10th and 25th percentile would range from 46.3 to 40.1

percent for Alternative 1A and from 29.8 to 25.4 percent for Alternative 1B. The revenue loss for the median (50th percentile) vessel was 24.0 percent and the revenue loss at the 25th percentile was 40.1 percent.

At the upper end of the distribution of impacted vessels are some vessels that may realize an increase in fishing revenues, in spite of the DAS reductions proposed under Alternative 1. For example, the 85 vessels above the 90th percentile would realize either no change, or some modest improvement in fishing income, because of the increase in the GOM cod trip limit from 400 lb under No Action to 800 pounds per day, as well as differences in the suite of closures between what had been in place in FY2001 and that proposed under Alternative 1. That is, compared to No Action, Alternative 1 measures permit a small number of vessels (about 10 percent) to be more efficient. For these vessels, the gain in efficiency is sufficient to more than offset the DAS losses resulting in a net increase in fishing income relative to No Action. This highlights the relationship between efficiency and regulatory design. That is, economic impacts may be reduced by identifying measures that permit vessels to operate as efficiently as possible within available effort allocations. The trip limit is one such example; the tradeoff between DAS and area closures is another. For example, for vessels with limited range a larger DAS reduction with fewer area closures may yield higher revenues as compared to a lower DAS reduction with more area closures.

At a fleet-wide level, Alternatives 1C and 1D have similar predicted revenue losses to that of Alternatives 1A and 1B. However, because of the comparatively more restrictive GB cod trip limit, Alternatives 1C and 1D revenue losses are 2–3 percent larger.

The impact on individual vessels depends on a variety of factors. Vessels that have a relatively high dependence on groundfish would be more affected by a given reduction in groundfish trip income than another vessel that is engaged in other fisheries. For example, if vessel A earned 80 percent and vessel B earned 20 percent of annual revenue from groundfish trips, a 20-percent reduction in groundfish revenue for both vessels would result in 16-percent reduction in total fishing income for vessel A, but would be only a 4 percent reduction in total annual fishing revenue for vessel B. For Alternative 1A and 1B the loss of gross fishing revenue increases with higher dependence on groundfish trip income (Table 193). For Alternative 1A, the median revenue loss for vessels that depend on groundfish for 25 percent or less of fishing revenue was estimated to be 3.2 percent while the median loss for vessels with 75 percent or greater dependence on groundfish was 41.1 percent. This difference between vessels from lower to higher levels of dependence on groundfish trip income is consistent for all percentiles. As noted above, the revenue losses for Alternative 1B are lower across all dependence categories. Alternative 1C and 1D revenue losses are higher, but not appreciably so, for vessels with groundfish dependence below 75 percent. Among vessels that are most dependent on groundfish, the revenue losses for Alternative 1C are 3 to 5 percentage points higher as compared to Alternative 1A with the same used DAS. Similarly, the losses of Alternative 1D exceed that of 1B particularly among vessels at or below the 10th percentile (*i.e.* the most affected vessels).

Dependence on groundfish is defined as the proportion of groundfish trip income of total fishing income. This magnitude of dependence does not take into account the level of total fishing income since a vessel with $5,000 in total fishing income could have the same level of dependence on groundfish as a vessel with $500,000 in total fishing income. In relative terms the impact on these two vessels may be the same but the total losses may be very different since the former may have income from other non-fishing sources while for the latter fishing may be the sole source of income and may support a larger number of people. To examine the relative impact on vessels with differing levels of groundfish revenues the estimated distribution of no action revenues was divided into approximate quartiles resulting in the following revenue classes; $35,000 or less, $35,001 to $100,000, $100,001 to $250,000, and $250,001 or more.

As was the case for groundfish dependence, the relative impact on vessels with higher gross sales was estimated to be greater at all percentiles, although the relative impact for the most affected vessels (the 10th percentile) was approximately the same (−47 percent) for all sales categories from $35,001 and above (Table 194). It is important to note that the fact that estimated relative revenue losses were generally higher for vessels with higher gross sales also means that the revenue losses in absolute terms would also be greater.

The relative impact on vessels with gross groundfish sales of $35,000 or less was substantially lower than vessels with higher gross sales. In fact, 25 percent of these vessels were estimated to earn higher fishing income under either Alternative 1A or 1B as compared to No Action. Vessels with increased revenue tended to be smaller vessels using gillnet or hook gear; vessels that would benefit relatively more from the increased GOM cod trip limit and whose revenue would be more sensitive to differences in area closures between No Action and Alternative 1. Estimated losses of gross revenues were higher for Alternative 1C and 1D as compared to 1A and 1B but the relative distribution of losses among sales intervals was similar; with revenue impacts tending to increase with sales.

The relative revenue loss was lower for hook gear than for either gillnet or trawl gears for both Alternative 1A and 1B (Table 195). Since cod represents a higher proportion of trip income for hook gear than for gillnet or trawl gear, revenue impacts associated with DAS reductions are offset by the higher GOM cod trip limit that for some vessels is enough to result in a net increase in fishing revenue.

Estimated revenue losses were similar among the most impacted gillnet and trawl vessels but estimated revenue changes tended to be less severe for gillnet vessels above the 25th percentile as compared to the trawl vessels. For example, the revenue loss of the median gillnet vessel was 12.0 percent as compared to 29.5 percent for the median trawl vessel. Gillnet losses tended to be lower than trawl losses, because like hook gear, cod represents a higher proportion of trip income so gillnet gear tends to benefit proportionally more from a change in cod trip limits than trawl gear. Note that total losses on trawl vessels is not only greater in relative terms but would also be greater in absolute terms since there are more than twice as many trawl vessels than either gillnet or hook vessels.

The more restrictive GB cod trip limit for Alternative 1C and 1D results in only a small loss on trawl vessels compared to Alternatives 1A and 1B but would have a larger loss on both gillnet and hook gears. However, these losses are not uniform for all hook and gillnet vessels. That is, vessels that rely on Gulf of Maine stocks would not be affected by a change in Georges Bank cod trip limits, whereas vessels that fish primarily on GB are more affected.

The estimated relative loss of total annual fishing revenue was lower for vessels under 50-feet for either Alternative 1A or 1B, although the Alternative 1A impact on the most affected small vessels was not substantially less (40.3 percent) than either medium (46.6 percent) or large (46.3 percent) vessels (Table 196). The

distribution of revenue impact was similar for both medium and large vessels indicating that neither vessel size class would be disproportionately affected relative to each other under either Alternative 1A or 1B. Since hook and gillnet vessels tend to be small, the economic impacts on small vessels of Alternatives 1C and 1D was proportionally greater than Alternatives 1A and 1B.

The relative revenue loss for small hook vessels was less than that of larger hook vessels, although not substantially so (Table 197). Unlike hook gear, small gillnet vessels were less affected than larger gillnet vessels but there was a greater difference in revenue loss with larger gillnet vessels being substantially more impacted at all percentiles than small gillnet vessels. For trawl gear, the distribution of revenue losses was similar across all size classes at least up to the 50th percentile. Above the 50th percentile small vessels tended to be proportionally less affected than either medium or large vessels and large vessels tended to be less impacted than medium vessels. As noted previously, due to the lower DAS reductions the revenue impacts for Alternative 1B were lower across all gear and size groupings than that of Alternative 1A.

Alternative 1A would have greatest revenue impact (*i.e.*, loss) on vessels from Maine home ports as compared to those vessels from other states (Table 198). The distribution of revenue loss was similar across all states except for New Jersey at the 10th percentile ranging from a loss of 42.8 percent in Rhode Island to 47.8 percent in Massachusetts. At the 25th percentile, Maine and Massachusetts's vessel revenue reductions were higher than all other states at 42.5 percent and 42.4 percent respectively. However, at higher percentiles Maine vessels were estimated to experience higher revenue loss than any other state at both the 50th and 75th percentiles.

Across all states, only New Jersey and Rhode Island (and quite likely New York) did not have any vessels with unchanged or increased fishing revenues under Alternative 1A. Vessels from these states are most likely to fish on GB or Southern New England and so would not be likely to benefit from an increase in the GOM cod trip limit.

Across port groups the relative distribution of estimated revenue losses was similar at and below the 25th percentile for the port groups of Boston, Gloucester, New Bedford, MA, and Portland, ME, Portsmouth, NH, and Upper Mid-Coast, Maine (Table 199). For these ports and port groups, the revenue losses on the most affected vessels ranged from 43.0 percent in Boston to 45.9 percent in Portland. Revenue losses at the 50th percentile ranged from nearly 30 percent in Portsmouth to 43.6 percent in Portland. Overall, Portland, Maine had the highest revenue reduction at the 25th, 50th, and 75th percentile. However, the total impact on the ports of New Bedford and Gloucester would likely be greater because the number of vessels operating out of these ports is greater. Among other ports the groups including Point Judith, Provincetown, and South Shore Massachusetts all had roughly equivalent revenue losses across all percentiles. Revenue losses on home port vessels in states with proportionally more vessels that rely on GB cod would be comparatively more affected under Alternative 1C and 1D as compared to 1A and 1B than vessels from states that have greater reliance on Gulf of Maine stocks. As noted previously, revenue losses of Alternatives 1C and 1D are larger for vessels that fish predominantly on GB and fish for GB cod in particular. This is particularly notable for the Chatham/Harwich port group that is home to a concentration of hook and gillnet vessels.

Alternative 2—Reduction in Allocated DAS With Gear Modifications

Alternative 2 would implement a suite of measures that would require a number of gear changes over and above what current regulations require. Alternative 2 would also implement a set of area closures that differ from no action and differ from that of Alternative 1. The DAS would be similar to current regulations (under the FW 33 court order) except that under Alternative 2A vessels that fished in the GOM would take a 30 percent reduction in DAS instead of 20 percent while Alternative 2B would result in the same proportional DAS reduction for all vessels but would restrict the total number of DAS that could be fished in the GOM to 70 percent of allocated DAS. In all other respects there are no differences between 2A and 2B.

In addition to DAS and area controls, Alternative 2 has a number of proposed gear restrictions that have been designed to reduce fishing mortality to desired levels. Alternative 2 also includes a hard TAC as a backstop measure, in case any one of the other effort reduction measures are not as effective as anticipated. The analysis presented below reports the impacts of fishing revenues for Alternative 2 with and without the TAC backstop. In this manner, the economic impact of the management measures modeled in the Closed Area Model can be contrasted with that of the TAC backstop. The Closed Area Model, however, does not include the impacts of some of the gear changes (haddock separator trawl, raised footrope trawl, mesh changes, etc). If these measures are as effective as expected, the revenue impacts would be more severe than those shown here for the alternative without the hard TAC. Nevertheless, removing the hard TAC from Alternative 2A and 2B and showing the economic impacts does demonstrate that these two alternatives may have slightly different distributive economic impacts.

Alternative 2B provides some flexibility to vessels to fish outside the GOM rather than be subject to a different DAS reduction. Because of this flexibility, the estimated gross revenue loss (Table 200) for Alternative 2B ($30.2 million) was slightly less than that of 2A ($31.6 million). This difference may be underestimated because the area closure model imposes constraints on fishing location decisions that are consistent with recent fishing history. This means that a vessel that never fished outside the GOM under the no action would not choose to do so under Amendment 13, even though it may be advantageous. Given this limitation, the revenue losses associated with Alternative 2B may be overestimated relative to Alternative 2A, which would tend to obscure the difference in relative economic effect between the two ways of administering DAS controls in the GOM.

As modeled, Alternative 2 does not meet conservation objectives without the hard TAC backstop. With a hard TAC, the added flexibility offered by the different DAS management options under Alternative 2A and 2B is eliminated because the hard TAC becomes more constraining than DAS allocations. This means that the estimated economic effects of the hard TAC backstop were the same regardless of the proposed DAS administration under Alternative 2A or 2B. The total loss of gross revenue was estimated to be $64.2 million. Note that this impact may be overestimated because the effectiveness of the gear changes could not be quantified. Should the gear changes be as effective as anticipated, or more so, then the hard TAC may not be constraining or would at least not be as constraining as predicted. Nevertheless, even though the economic impact would likely be lower it would probably still be greater than that estimated for Alternative 2A and 2B without the hard TAC backstop since that analysis underestimates revenue impacts because assumed catch rates, hence

fishing revenue, would be overestimated.

At the vessel-level the estimated revenue losses associated with Alternative 2 with the hard TAC were higher by about 30 percent at the 10th and 25th percentile. The difference in impact at the median was not quite as high but was still higher by 23 percent (−37.1 percent for Alternative 2 with a hard TAC as compared to −13.8 percent for Alternative 2 without a TAC backstop).

Without the TAC backstop the impact on annual estimated gross fishing revenue increased, as dependence on groundfish revenue increased (Table 201). The median loss for vessels that rely on groundfish was less than 1 percent, but was almost 25 percent for vessels with 75 percent or greater reliance on groundfish. Among those most dependent on groundfish, estimated revenue loss was 63 percent or more for 37 of 371 vessels.

For some vessels, the estimated revenue change was positive suggesting some vessels would see modest improvements in total fishing revenues under Alternative 2. Such an increase in gross revenue results relative to the No Action because of the increase in the GOM cod trip limit as well as some differences in area closures. Note that positive changes in revenues tend to be associated with vessels that are less dependent on groundfish.

With the hard TAC backstop the estimated revenue losses for vessels least dependent on groundfish would be greater but not by more than 6 percent at any given percentile. However, for vessels with greater dependence on groundfish for total fishing revenue, the estimated impact of the hard TAC backstop was much greater, particularly among the most affected vessels (*i.e.* at the 10th percentile). For example, the impact on gross revenues for vessels that depend on groundfish for 25 to 50 percent of revenue would be almost −33 percent with a hard TAC as compared to about −20 percent without a TAC backstop.

The estimated impact of Alternative 2 without the TAC backstop was generally less for vessels with gross sales of $35,000 or less (Table 202). Across all categories of gross sales the largest reduction in gross revenue was 50.9 percent or greater for vessels with gross sales between $100 and $250 thousand. However, at the 25th and 50th percentile revenue losses within this sales category were similar to that of vessels with sales of between $35,000 and $100,000 and to vessels with sales in excess of $250,000. Above the 50th percentile the proportional change in revenue impacts was greatest for vessels with gross sales above $250,000.

With a hard TAC backstop, the estimated revenue losses were larger across all categories of gross sales at all percentiles with revenue reductions at the 10th percentile of 70 percent or more for vessels with gross sales of $35,000 to $250,000. Estimated impact on the median vessel was highest (−49.9 percent) for vessels with gross sales of more than $250,000 and lowest (−12.9 percent) for vessels with $35,000 or less in gross sales.

Alternative 2 contains a modest increase in the GOM cod trip limit compared to what had been implemented during FY2001. However, Alternative 2 has a trip limit on GB cod that is much lower than that of the No Action which means that vessels that depend on GB cod for the majority of fishing revenue would be significantly affected under this particular Alternative. The difference in cod trip limits between GOM and GB is evident in the estimated revenue impacts of both gillnet and hook gear. Without a hard TAC backstop the revenue impacts for these two sectors show markedly different effects depending upon whether a vessel might fish in the GOM or GB as estimated revenue losses for gillnet vessels ranged from −56.9 percent at the 10th percentile to a gain of 0.7 percent at the 90th percentile (Table 203). The range of revenue loss on hook gear was even greater with 8 vessels experiencing a loss of 73.7 percent or more with the same number of vessels experiencing revenue increases of 6.3 percent at the 90th percentile. Revenue loss on vessels using trawl gear ranged between −33.4 percent and no change in revenue at the 10th percentile and 90th percentiles respectively. The disproportionate loss in revenue for hook and gillnet vessels operating on GB is due to the greater reliance on cod for fishing revenue as compared to trawl gear.

With the hard TAC backstop, the disparity across gear groups does not disappear altogether, but it is reduced . Specifically, at the 10th percentile gillnet and hook gear impacts were estimated to be −75.9 percent and −78.5 percent, respectively. The impact on trawl gear was still lower at 67 percent. The analysis showed a much smaller difference among gear groups than estimated impacts without the hard TAC. The median vessel impact across gear groups was similar ranging between −34 and −38.1 percent.

Without a hard TAC backstop, the relative impacts of Alternative 2 on vessels of different sizes were similar for Alternatives 2A and 2B (Table 204). Across size classes the impacts on medium and large vessels were similar as there were only modest differences in revenue change at any percentile from the 10th to the 90th. By contrast, small vessels were substantially more affected at the 10th percentile (58.8 percent loss) than either medium (36.1 percent) or large (33.3 percent) vessels.

With a hard TAC backstop the impact was still proportionally greater on small vessels (−75.7 percent) at the 10th percentile but the relative distribution of impacts across vessels of differing sizes was similar at all other percentiles.

For trawl gear there was little difference among small, medium or large vessels in the distribution of revenue impacts (Table 205). For example, revenue impacts without a TAC backstop among the most negatively affected trawl vessels ranged from −32.4 percent for medium vessels and −35.1 percent for small vessels. Median impacts also fell within a relatively narrow range of −12.6 percent to −15.0 percent for large and medium trawl vessels, respectively. With a hard TAC backstop the relative distribution of impacts across trawl vessels was similar although estimated revenue impacts were consistently greater for small followed by medium then large vessels at the 10h, 25th, and 50th percentiles. At higher percentiles medium-sized vessels tended to be most impacted compared to other trawl vessels.

Both with and without the hard TAC backstop, small hook and small gillnet vessels tended to be comparatively more impacted than larger hook or gillnet vessels although both gear/size groupings were disproportionately affected relative to either trawl or gillnet gears. Without the TAC backstop, both small and larger gillnet vessels were similarly affected up to the 25th percentile but median impacts were lower for small gillnet vessels (−6.0 percent) compared to medium gillnet vessels (−14.4 percent). These larger gillnet vessels were estimated to experience larger revenue changes at higher percentiles as well. With the TAC backstop, efficiency gains from the increase in the GOM cod trip limit are lost as TACs. The TAC backstop, once reached, reduces overall fishing opportunities.

Without a TAC backstop, Alternative 2 measures would have least impact on New Jersey vessels and would have greatest overall impact on Massachusetts vessels (Table 206). The median vessel impact (−23.2 percent) was greater for Massachusetts vessels than any other state and the impact on the most affected vessels was −58.8

percent or more which exceeded the next closest state (New Hampshire) by almost 19 percentage points.

The overall impact on gross annual revenues was similar for Rhode Island and for New York/Connecticut vessels as revenue impacts ranged from −20.7 percent/−17.2 percent to no change/+0.7 percent in Rhode Island and New York/Connecticut respectively. Among the remaining states the relative impact on New Hampshire vessels was greater than that of Maine vessels since the estimated revenue loss was greater at all percentiles for New Hampshire than for Maine vessels.

The hard TAC backstop would increase estimated revenue reductions but the overall pattern of effects across differing states would be unchanged. The state of Massachusetts would still be most impacted followed by New Hampshire and Maine. The relative distribution of impacts on Rhode Island and New York/Connecticut would still be roughly equivalent and New Jersey vessels would be least affected.

Across all ports and port groups the largest reduction in annual fishing income would be in the port group of Chatham/Harwich with three-fourths of all vessels losing at least 29.7 percent of fishing revenue and half of all vessels losing more than half of fishing income. The impacts on these ports are directly related to the reduction in the GB cod trip limit as this port group is a center for the Cape Cod hook and gillnet fleet that relies heavily on GB cod for fishing revenue.

The Chatham/Harwich port group would still be the most impacted area under a TAC backstop with three-fourths of all vessels losing nearly 50 percent of annual fishing income. Among the most impacted vessels the estimated revenue loss was at least 77 percent.

Without a hard TAC backstop, the distribution of revenue changes was similar for the ports of Provincetown, Gloucester, New Bedford, Boston, and South Shore Massachusetts, and the New Hampshire Seacoast. Thus, even though the revenue losses among these ports do differ, Alternative 2 does not disproportionately disadvantage these ports over one another. Ports that may be expected to experience lowest revenue impact include Point Judith and the Eastern Long Island port group.

The hard TAC backstop would change the relative distribution of impacts across port groups. As noted previously, Chatham/Harwich would be most impacted but Gloucester would also be disproportionately affected whereas the relative distribution of impacts on the ports of New Bedford, New Hampshire Seacoast, Portland, Portsmouth, Provincetown, and Upper Mid-Coast Maine would be similar.

Alternative 3—Area Management

As proposed, other than area-species TACs, Alternative 3 (area management) would not implement any specific new measures as these would be developed later by some yet to be determined form of area management team or other type of governing body. The area closure model was used to estimate the impacts of current measures that would remain in place as well as the economic impact of a hard TAC. As noted previously, the area closure model treats a hard TAC as equivalent to an individual vessel quota and so does not evaluate area-specific quotas without also prorating those quotas by species and areas to individual vessels. However, the area closure model also limits fishing choices to areas that had been fished by a given vessel. This means that the area closure model already incorporates some aspects that would be consistent with assignment of a species-area TAC so the results may reasonably approximate the impact of an area TAC particularly one that is based primarily on logbook records.

Other than area-specific TACs the default management measures including trip limits, area closures and DAS allocations are identical to Alternative 4. For this reason, the economic impact of the Alternative 3 measures with a hard TAC are discussed with Alternative 4 (section 5.4.4.5).

Alternatives 3, 4, and 4A—Hard TAC Alternatives

Alternative 3, 4 and 4A implement a hard TAC in addition to different suites of area closures, DAS allocations, and gear restrictions. In spite of these differences, the estimated impact of all three alternatives was approximately the same because the hard TAC becomes the primary measure that constrains individual vessels. Note that the gear differences between Alternatives 4 and 4A could not be taken into account because the base data for the area closure model included catch information for 1998–2001. These years would be consistent with Alternative 4A but would not reflect the effect of current gear restrictions that are also proposed for Alternative 4. How this effects the analysis is unclear. On the one hand, larger mesh associated with Alternative 4 may result in lower catch rates and the TAC might not be reached as quickly while on the other hand, DAS allocations are lower.

As noted previously, Alternative 3 was modeled in its default form as though it were identical to Alternative 4. Therefore, in the following discussion, Alternatives 3 and 4 are referred to as a single alternative, called Alternative 3/4. Given that the default would likely be changed once the specific management areas, method for assigning TACs, and most importantly, mechanism for developing measures for each area have been determined, the estimated impact of Alternative 3/4 may be an upper-bound. Presumably, management measures by area would be designed so as to reduce overall economic impacts on area participants, but the form that these measures will take cannot be anticipated at this time.

For both Alternative 3/4 and 4A the total revenue loss from all species on groundfish trips was estimated to be $59.9 million. Median revenue loss was estimated to be 35 to 36 percent (Table 208). Revenue losses for the most affected vessels would be at least 63.2 percent while revenue losses for the least affected vessels would be approximately 5 percent.

The relative distribution of impacts for both Alternative 3/4 and 4A are virtually identical. This does not necessarily mean that the two alternatives affect all vessels the same way. That is, the impact on the median vessel (or at any other percentile) may be the same for both alternatives but may not be the same vessel. The primary source of differential impact across Alternative 3/4 and 4A is likely to be the area closures particularly for vessels that fish within a limited range and/or within a relatively short season. However, even though the two Alternatives affect different vessels differently, the overall estimated impact on the groundfish fleet was similar.

The impact on gross revenue losses increases with dependence on groundfish (Table 209). Estimated revenue impacts ranged between −13.8 percent at the 10th percentile to −0.1 percent at the 90th percentile for vessels that rely on groundfish for less than one-quarter of annual fishing revenue.

By contrast, gross revenues for vessels most dependent on groundfish were estimated to decline by at least 70 percent for the 37 vessels at or below the 10th percentile. At the 90th percentile, vessels were estimated to lose between 35 and 37 percent of gross revenue for Alternative 3/4 and 4A, respectively.

At the 10th percentile, estimated revenue reductions ranged from 61 to 67 percent regardless of the amount of annual gross groundfish sales (Table 210). At the 25th percentile, the revenue reductions were lower (about 40 percent) for vessels with groundfish

sales of $35,000 or less as compared to vessels with higher groundfish sales (52 to 55 percent). Similarly, the revenue changes for vessels with the least groundfish sales at higher percentiles were also lower than that of vessels with more than $35,000 in groundfish sales at the same percentile. However, the relative distribution of revenue impacts was similar for each sales interval above $35,000.

The relative distribution of estimated changes in annual fishing revenue was comparable across gear groups for both Alternative 3/4 and 4A (Table 211). Although the estimated revenue reduction at every percentile was consistently ordered from lowest (hook gear) to highest (trawl gear), the difference in impact at each percentile was no more than five percentage points. Thus, even though the total revenue loss would be largest on trawl gear (nearly 70 percent of total vessels), Alternative 3/4 would not place any given vessel at a competitive disadvantage based solely on gear.

The distributions of estimated revenue reductions were similar for all vessels size classes for both Alternatives 4 and 4A (Table 212). At the 10th percentile estimated losses were largest for small vessels (64.2 percent for Alternative 4A) as compared to medium (63.2 percent) and large vessels (58.7 percent), although these differences are not large. At all other percentiles estimated revenue reductions were higher for medium than for either small or large vessels, but once again, the difference across vessel length categories was less than 10 percentage points.

Alternatives 3/4 and 4A would have similar impacts among hook vessels of differing size although estimated revenue reductions among 10 percent of the most affected vessels would be greater for small (60.6 percent) than for large (52.2 percent) hook vessels. However, the difference between the two size classes of hook vessels is less than five percentage points at all other percentiles.

Small trawl vessels would be comparatively more affected by either Alternative 3/4 or 4A at all percentiles up to the median vessel as compared to either medium or large trawl vessels. Similarly, medium-sized trawl vessels were estimated to incur higher revenue losses than large vessels at all percentiles. Thus, Alternative 3/4 and 4A would tend to have disproportional affects across vessel size classes with large vessels being least impacted followed by medium and small vessels, although the difference in economic effect by vessel size class is not large.

The estimated revenue losses among gillnet vessels of differing size was similar with no more than four to five percentage points separating either size class across all percentiles. Thus, Alternative 3/4 and Alternative 4A would not result in disproportionate economic impacts among gillnet vessels of differing lengths.

The estimated revenue changes across different states would be similar for New Hampshire and Massachusetts vessels up to the 25th percentile (Table 214). Revenue reductions for Massachusetts (45.8 percent), Maine (43.5 percent) and New Hampshire (45.1 percent) were similar at the 25th percentile, but estimated reductions on New Hampshire vessels were larger than either Maine or Massachusetts at the 75th and the 90th percentiles.

Alternatives 3/4 and 4A would have the least impact on New Jersey vessels. The estimated revenue reduction on Rhode Island vessels was similar to that of New York/Connecticut vessels although Rhode Island vessels were more negatively affected at all percentiles.

Across ports or port groups median estimated revenue losses exceeded 50 percent in the ports of Gloucester, Portland, and Boston. This means that half of all vessels in these three port groups would lose more than half of annual fishing revenue under either Alternative 3/4 or 4A. Median revenue losses were lower in the port groups of Chatham/Harwich, New Bedford, NewHampshire Seacoast, Portsmouth, Provincetown, and Upper Mid-Coast Maine, but still were at least 44 percent. By contrast, median vessel revenue losses in Eastern Long Island and Point Judith were 13.5 percent and 26.1 percent respectively (Table 215).

Measures To Minimize Adverse Effects of Fishing on EFH

A level 1 habitat closure under Alternative 10B, as opposed to the proposed level 3 closure, would produce a decrease in total gross revenues of 1.3 percent for proposed Alternative 10B and between 1.3 percent and 12.8 percent for other alternatives (Table 294).

Under a level 3 closure, revenue impacts across species were more varied across alternatives than total revenue impacts. The impact on monkfish revenue was between 11 and 18 percent under any of the variants of Alternative 5. By contrast, scallop revenue impacts were largest under Alternative 5b (10.8 percent) but were less than 1.5 percent for Alternatives 5a, c, and d. Revenue losses for small mesh fisheries for whiting and squid were similar (about 3 percent) for Alternatives 5a, b, and c but were less than 1 percent for all others. Revenue losses for combined ''other species (dogfish, skates, lobster, shrimp, herring, mackerel, tunas, and clams) were greatest for Alternatives 5b (12.7 percent) and 5c (11.4 percent) but were similar all other habitat alternatives (from 3.5 to 6.5 percent). Revenue losses for groundfish were highest for Alternative 5b (21.6 percent) and lowest for Alternative 10A (1.6 percent). With only a few exceptions, revenue losses for groundfish exceeded that of all other species across all alternatives. Revenue losses for combined summer flounder, black sea bass, and scup were 0.1 percent for all alternatives other than the variants of Alternative 5. Among these alternatives, revenue losses were similar for Alternatives 5a, c, and d.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

The Council considered 2 alternatives to the proposed action for tuna purse seines—no action, and access with restrictions. Under the no action alternative, there are no changes to current fishing practices. Fishing vessel revenues and operating costs are not expected to change. Therefore, there is no net change in the economic impacts under this option. As a result of the no action alternative, however, tuna purse seine vessels are limited in the area that they can fish. This may constrain their ability to fish at times that avoid the seasonal glut of tuna landings that result from the General Category sub-period openings. If this occurs and purse seine vessels land their catches at the beginning of a sub-period, ex-vessel prices could be depressed resulting in lower gross revenues for both the General and Purse Seine category vessels. It is not possible to predict how often this may occur, since the distribution of tuna varies considerably over time.

The access with restrictions option would allow tuna purse seine vessels to fish in all groundfish closed areas, but limits fishing in closed areas to water depths of 30 fathoms or greater (or alter nets to less than the depth of water) and excludes the vessels from any HAPC. Allowing vessels to fish in closed areas may reduce vessel operating costs because it expands the area available to locate and fish on tuna schools. While allowing tuna purse seine vessels to fish in three areas presently closed to them may decrease vessel costs, this option also significantly changes current access to the seasonal closures in the Gulf of Maine and the WGOM closed area. Most of the seasonal closures occur in the winter and early spring and are not in

effect during the purse seine fishing season. The Cashes Ledge closure (July through October, November if triggered) and the October and November closures of thirty minute square blocks 124 and 125 do occur during the purse seine season. In addition, the year round WGOM closure area may also be important to purse seine vessels. This option does provide some increased ability for purse seine vessels to avoid fishing during periods of high landings from General category vessels because it allows partial access to all groundfish year round closed areas. This may reduce the likelihood and extent of market gluts and result in higher ex-vessel prices for both categories of vessels. Because certain types of fixed gear are allowed in the groundfish closed areas (lobster and hagfish pots), allowing tuna purse seine vessels into these areas may increase the likelihood of gear conflicts. Given the small number of tuna purse seine sets and the historically low number of reported gear conflict incidents, the likelihood of significant gear conflicts is very low.

GB Gillnet Sector

An additional GB sector allocation that would allocate part of the groundfish resource to gillnet vessels on GB was not approved. Instead, the Council chose to develop a framework action at a later date when sufficient data were available to estimate the impacts of a sector gillnet fishery. If successful, economic benefits similar to those discussed for the GB hook sector would be expected.

Hand Gear Only Permit

The no-action alternative would not change any economic benefits or costs relative to the baseline. Alternative 2 would not change the trip limits but would remove the prohibition of issuing permits to vessels that had never held any such permit. Alternative 2 would have no additional economic impact on vessels that may participate in the fishery but would provide, albeit limited, an opportunity for new participants.

Other Capacity Control Alternatives to DAS Tansfers

The Council also considered DAS absorption, permit transfer, DAS transfers, freeze on unused DAS, DAS reserve, and mandatory latent effort categorizations. Each of the capacity alternatives is designed to provide greater economic opportunity and flexibility in all fisheries while maintaining the character of the existing fleet and to achieve some long-term reduction in the number of vessels permitted to fish in Northeast fisheries. Many of these alternatives require that with the transfer of its permits the selling vessel must retire from fishing in state or federal open and limited access fisheries. While this expands economic opportunities for some vessels, it eliminates participation of others in the groundfish and other fisheries. This may reduce participation in the capacity reduction programs. Measures which define effective effort may have widely varied impacts on permit holders depending on their history in the groundfish fishery, benefitting some and severely limiting others. For additional detail on the economic impacts of the other alternatives dealing with capacity control, *see* section 5.4.9.4.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The proposed measures under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP; (10) expedited submission of a proposed SAP; (11) request to power down VMS for at least 1 month; (12) GB Hook Gear Cod Trip Limit Exemption declaration; (13) request for an LOA to participate in the GOM Cod Landing Exemption; (14) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (15) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (16) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (17) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (18) submission of a sector allocation proposal; (19) submission of a plan of operations for an approved sector allocation; (20) daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs; and (21) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs.

Other Compliance Requirements

All groundfish DAS vessels participating in the U.S./Canada Understanding, and all participants in SAPs, with the exception of the SNE/MA Winter Flounder SAP, must use VMS within these programs. Any vessel that does not currently possess a VMS must obtain one prior to fishing in a SAP or in the U.S./Canada Management Area. The cost of purchasing and installing VMS, along with the associated operational costs is currently estimated at $3,600 per vessel.

Participation in the CA I Hook Gear SAP would require observers to be on board each vessel. It is estimated that the cost of complying with this regulation would be $1,150 per day at sea.

The required changes to mesh size were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be $1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be $7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was $9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be $18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be $8,800. Finally, the requirement for groundfish vessels to fish with a haddock separator trawl or a flatfish net when fishing in the U.S./Canada Resource Sharing Understanding areas was estimated to affect 400 vessels. The average cost for these vessels to replace their nets with a flatfish net was estimated to be $747, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately $7,500.

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648–0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648–0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648–0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648–0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648–0202, (1 hr/response);
6. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648–0202, (5 sec/response)
7. VMS proof of installation, OMB Control Number 0648–0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648–0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648–0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648–0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648–0202, (5 min/response);
12. GB Hook Gear Cod Trip Limit Exemption declaration, OMB Control Number 0648-0202, (5 min/response);
13. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648–0202, (5 min/response);
14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area, OMB Control Number 0648–0202, (5 min/response);
15. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648–0202, (5 min/response);
16. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648–0202, (5 min/response);
17. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648–0202, (5 min/response);
18. Submission of a sector allocation proposal, OMB Control Number 0648–0202, (50 hr/response);
19. Submission of a plan of operations for an approved sector allocation, OMB Control Number 0648–0202, (50 hr/response);
20. Daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs, OMB Control Number 0648–0212, (0.25 hr/response);
21. Annual reporting requirement for sectors, OMB Control Number 0648–0202, (6 hours/response). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information; and
22. Trip notification for vessels participating in the Agreement Management Areas for the purpose of observer coverage, OMB Control Number 0648–0202, (5 min/response).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (*see* **3ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 21, 2004.

Rebecca Lent,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, new definitions for ''Bottom tending mobile gear,'' ''DAS Lease,'' ''DAS Lessee,'' ''DAS Lessor,'' ''Hand gear,'' ''Sector,'' ''Static gear,'' ''Stock of concern,'' ''Sub-lease,'' ''Tub-trawl,'' and ''Tuna purse seine gear,'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Bottom tending mobile gear, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

* * * * *

Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

* * * * *

Sector, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

* * * * *

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving

to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

* * * * *

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

* * * * *

3. In § 648.4, paragraph (a)(1)(i)(A), paragraph (a)(1)(i)(E) introductory text, paragraphs (a)(1)(i)(G), (I)(1) and (M), and paragraph (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph. For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(1) and (2) of this section:

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to May 31, 2003.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(G) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

* * * * *

(I) * * *

(*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(2) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

* * * * *

(M) *Appeal of denial of permit—(1) Eligibility.* Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) For vessels fishing with hook gear, and electing to fish under the GB Hook Gear Cod Trip Limit Program, as described in § 648.86(b)(2)(ii), an annual declaration as a participant of this program must be obtained according to instructions provided by the Regional Administrator. Once a vessel owner has

elected into this program, he/she may not fish outside of this trip limit program for the remainder of the fishing year.

* * * * *

4. In § 648.7, paragraphs (a)(1) introductory text, (a)(1)(i), and (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) *Detailed weekly report.* Until otherwise required by the Regional Administrator, federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, and a report of all fish purchases, except for surfclam and ocean quahog dealers or processors, who are required to report only surfclam and ocean quahog purchases. Once authorized in writing by the Regional Administrator, all dealers must submit daily reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surfclam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (*i.e.*, less than 23 inches (58.42 cm), total length) or ''large'' (*i.e.*, 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

5. In § 648.9, paragraphs (b)(5) and (c) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(b) * * *

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification, ''real time'' shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

* * * * *

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) At least twice per hour, 24 hours a day, throughout the year for all NE multispecies vessels that elect to fish with a VMS specified in § 648.10(b) or are required to fish with a VMS as specified in § 648.85(a).

(2) *Power Down Exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 1 calendar month by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times.

(ii) *Letter of exemption.*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator

may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

* * * * *

6. In § 648.10, paragraphs (b), (c), and (f) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit;

(ii) A scallop vessel issued an occasional limited access permit when fishing under the Sea Scallop Area Access Program specified in § 648.58;

(iii) A scallop vessel fishing under the Small Dredge program specified in § 648.51(e);

(iv) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section.

(v) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(2)(iii) under the provisions of that program.

(ii) A Part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of paragraph (b) of this section begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(i), (ii), (iii), and (v) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii) of this section, to provide the notifications required by paragraph (b) of this section, or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

(ii) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section.

(iii) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels

that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification.* Owners of vessels issued limited access NE multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, and scallop vessels qualifying for a DAS allocation under the Occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish Category C or D permit, unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C or D permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(ii), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, port of landing and permit number, and that the vessel has ended a trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iv) of this section.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and phone number and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(j)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

7. In § 648.14, paragraphs (a)(39), (40), (43), (47), (52), (55), (90), (104), (116), (126); (b)(1) through (4); (c)(1), (3), (7), (10) through (15), (18), (21), (23), (24), (26), and (29) through (33); the introductory text to paragraph (d); and paragraph (d)(2) are revised; and paragraphs (a)(128) through (162) and (c)(34) through (50) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2)

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE General Category Scallop exemption area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

* * * * *

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a multispecies permit, unless otherwise specified in § 648.17.

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to

remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.81(f)(2)(ii) and 648.80(g)(6)(i) and (ii), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), and (f)(2)(iii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

* * * * *

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(1) through (8).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, or enter or exit the declared area more than once per trip.

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Agreement Management Areas defined in § 648.85(a)(1), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

(133) If fishing under an NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in an approved Special Access Program (SAP) specified in § 648.85(b)(3) or (4).

(135) If fishing under an NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (x).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v) or (4)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) If fishing under the Closed Area II Haddock SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(4)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(4)(i) through (x).

(143) Enter or fish in Closed Area II under the Closed Area II Haddock SAP outside of the season specified in § 648.85(b)(4)(iii).

(144) If fishing in the Closed Area II Haddock SAP specified in § 648.85(b)(4), exceed the number of trips specified in § 648.85(b)(4)(vi).

(145) If fishing in the Closed Area II Haddock SAP specified in § 648.85(b)(4), exceed the trip limits specified in § 648.85(b)(4)(viii).

(146) If fishing in the Closed Area I Hook Gear SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(5)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(5)(i) through (viii).

(147) Enter or fish in Closed Area I under the Closed Area I Hook Gear SAP outside of the season specified in § 648.85(b)(5)(iii).

(148) If the vessel is fishing under the Closed Area I Hook Gear SAP, fail to comply with the VMS requirements in § 648.85(b)(5)(iv).

(149) Enter or fish in Closed Area I specified in § 648.81(a), unless declared into the area in accordance with § 648.85(b)(5)(v).

(150) If fishing in the Closed Area I Hook Gear SAP specified in § 648.85(b)(5), exceed the trip limits specified in § 648.85(b)(5)(vi).

(151) Enter or fish in Closed Area I, specified in § 648.81(a), after the Closed Area I Hook Gear SAP is closed, as described in § 648.85(b)(5)(vii).

(152) If fishing in Closed Area I under the Closed Area I Hook Gear SAP, fail to carry an observer on board the vessel, as required under § 648.85(b)(5)(viii).

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the restrictions and conditions under § 648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as provided under paragraph (b)(1)(xii) of that section.

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(b) * * *

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with an NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(c) * * *

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

* * * * *

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the NE Multispecies DAS Leasing Program or the NE Multispecies DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (g), and (h), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access multispecies permit.

* * * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(11) If the vessel has been issued a limited access multispecies permit and fishes under a multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(14) If the vessel has been issued a limited access multispecies permit and fishes under a multispecies DAS will gillnet gear, fail to comply with gillnet tagging requirements specified in § 648.80(a)(3)(iv)(A)(*4*), (a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(A)(*3*), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(C), (b)(2)(iv)(F), (c)(2)(v)(A)(*2*), and (c)(2)(v)(B)(*2*), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

* * * * *

(18) [Reserved]

* * * * *

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

* * * * *

(23) [Reserved]

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4) or under the GB Hookgear Cod Trip Limit Program specified in § 648.86(b)(2)(ii).

* * * * *

(26) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii) or (iii).

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(i), (d)(2), (e)(2), (f)(2), and (g)(2).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi), with the exception of shrimp trawls fishing in the area described in § 648.81(h)(i).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as Lessor or Lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii)

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to

obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) If fishing under the GB Hookgear Cod Trip Limit Program specified in § 648.86(b)(ii), land fish on any Friday or Saturday.

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

* * * * *

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

* * * * *

8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

(iv) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

9. Section 648.80 is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(1)

[1] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not

apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels.*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′

INSHORE RESTRICTED ROLLER GEAR AREA—Continued

Point	N. Lat.	W. Long.
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels*—(*1*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(1) *Number of nets.* A Day gillnet vessel fishing under an NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(*4*) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under an NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated

Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no regulated multispecies bycatch.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing regulated species bycatch.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Bycatch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species.

(iv) Bycatch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a) (3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. Lat.	W. Long.
SM1	43°03′	70° 27′
SM2	42°57′	70° 22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. Lat.	W. Long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a) (3) or (4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
Cl1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a) (1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a) (3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and

offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. Lat.	W. Long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action

prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′

GULF OF MAINE/GEORGES BANK EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		70°00′ [1]	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with section § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels*—(*1*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels*—(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow

additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions*—(i) *Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE

Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east–northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI–MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
Sc1	(1)	73° 00′

Point	N. Lat.	W. Long.
Sc2	40°00′	73°00′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	([2])	70° 00′
Sc7	([3])	70° 00′
Sc8	([4])	70° 00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
Sc9	41°00′	([5])
Sc10	41°00′	71°40′
Sc11	([6])	71°40′

[5] East facing shoreline of the south fork of Long Island, NY.
[6] South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area.* (1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hookgear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hookgear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* (*1*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels*—(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and

provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42;°20′ N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*— (i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE ultispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the

applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

10. Section 648.81 is revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point N.	Lat.	W. Long.
CII1	41°00′	67°20′
CII2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ (the U.S.-Canada Maritime Boundary)

CLOSED AREA II—Continued

Point N.	Lat.	W. Long.
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
CII1	41°00′	67°20′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;

(iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or

(iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and

(B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°50′	70°20′
G10	40°50′	69°00′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (b)(2)(ii) and (iii) of this section.

(e) *Western GOM Area Closure.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM AREA CLOSURE [1]

Point	N. Lat.	W. Long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section, or that are fishing with shrimp trawl gear, consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. Lat.	W. Long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

[1] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)

ROLLING CLOSURE AREA II—Continued

[April 1–April 30]

Point	N. Lat.	W. Long.
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM9	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. Lat.	W. Long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS

[May 1–May 31]

Point	N. Lat.	W. Long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70°00′

1 Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in

§ 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* With the exception of vessels fishing with shrimp trawl gear, the bottom tending mobile gear restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
JB1	43°40′	68°50′

JEFFREY'S BANK HABITAT CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIIH1	42°00′	67°20′
CIIH2	42°00′	67°00′
CIIH3	41°40′	66°43′
CIIH4	41°40′	67°20′
CIIH1	42°00′	67°20′

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. Lat.	W. Long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the Cashes Ledge Closure Area, the Western GOM Area Closure, the GOM Rolling Closure Areas, the GB Seasonal Area Closure and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.

Point	Latitude	Longitude
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ W.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of section 648.23(b)

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Restricted period*—(i) *Mobile gear.* From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of section 648.23(b).

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182 ..	40°05.6′ N.	70°17.7′ W.
183 ..	40°06.5′ N.	70°40.05′ W.
184 ..	40°11.05′ N.	70°45.8′ W.
185 ..	40°12.75′ N.	70°55.05′ W.
186 ..	40°10.7′ N.	71°10.25′ W.
187 ..	39°57.9′ N.	71°28.7′ W.
188 ..	39°55.6′ N.	71°41.2′ W.
189 ..	39°55.85′ N.	71°45.0′ W.
190 ..	39°53.75′ N.	71°52.25′ W.
191 ..	39°47.2′ N.	72°01.6′ W.
192 ..	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		

Point	Latitude	Longitude
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70 .... to 192	39°29.75′ N.	72°09.8′ W.

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of 648.23(b).

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206 ..... to 119	40°07.80′ N.	70°09.20′ W.
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119 ..... to 206	40°02.75′ N.	70°16.1′ W.

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of section 648.23(b).

(ii) [Reserved].

11. Section 648.82 is revised to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) Except as provided in § 648.17 and paragraph (a)(2) of this section, a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given

fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

(5) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved].

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for cod, as specified in § 648.86(b). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to May 31, 2002). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in section § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip

reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies permits and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (e) of this section, shall not occur if the Regional Administrator:

(i) Determines that the Amendment 13 projected target biomass levels, for relevant stocks specified in Amendment 13, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on such stocks; and

(ii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program. Starting in fishing year 2006, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

(f) *Good Samaritan credit.* See § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day

gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved].

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program.* (1) *Program description.* For fishing years 2004 and 2005, eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time throughout the fishing year, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an

enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C and D vessels.* A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(l) *DAS Transfer Program.* Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, will be reduced by 40 percent upon transfer.

(v) Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS.* Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete

or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

12. Section 648.83 is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

13. Section 648.84 is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

14. Section 648.85 is revised to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. Lat.	W. Long.
USCA 1	42° 20′	68° 50′
USCA 2	39° 50′	68° 50′
USCA 3	39° 50′	66° 40′
USCA 4	40° 40′	66° 40′
USCA 5	40° 40′	66° 50′
USCA 6	40° 50′	66° 50′
USCA 7	40° 50′	67° 00′

WESTERN U.S./CANADA AREA—Continued

Point	N. Lat.	W. Long.
USCA 8	41° 00′	67° 00′
USCA 9	41° 00′	67° 20′
USCA 10	41° 10′	67° 20′
USCA 11	41° 10′	67° 40′
USCA 12	42° 20′	67° 40′
USCA 1	42° 20′	68° 50′

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. Lat.	W. Long.
USCA 12	42° 20′	67° 40′
USCA 11	41° 10′	67° 40′
USCA 10	41° 10′	67° 20′
USCA 9	41° 00′	67° 20′
USCA 8	41° 00′	67° 00′
USCA 7	40° 50′	67° 00′
USCA 6	40° 50′	66° 50′
USCA 5	40° 40′	66° 50′
USCA 4	40° 40′	66° 40′
USCA 15	40° 30′	66° 40′
USCA 14	40° 30′	65° 44.3′
USCA 13	42° 20′	67° 18.4′
USCA 12	42° 20′	67° 40′

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and theamount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. The VMS unit will be polled at least twice per hour, regardless of whether the vessel has declared into the U.S./Canada Management Areas.

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraphs (b)(3) and (4) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(6)(i) and (ii) of this section. No other type of fishing gear may be on the vessel during a trip to a U.S./Canada Management Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock separator trawl.* A haddock separator trawl is defined as a groundfish trawl, modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal, large-mesh separating panel constructed with a minimum of 6.5-inch (16.5-cm) square

or diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraphs (a)(6)(i)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(*1*) *Two-seam bottom trawl nets.* For two-seam nets, the separator panel must be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes.

(*2*) *Four-seam bottom trawl nets.* For four-seam nets, the separator panel must be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel must be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder trawl net.* A flounder trawl net is defined as a two-seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m), and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3 feet (0.91 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod possession restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels fishing in either of the U.S./Canada Management Areas described in paragraph (a)(1) of this section may not possess more than 500 lb (226.8 kg) of cod per DAS, not to exceed 5 percent of the total catch on board, unless otherwise restricted under this part.

(B) *Haddock possession limit*—(*1*) *Initial haddock possession limit.* The initial haddock possession limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock possession limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section.

(C) *Yellowtail flounder possession limit*—(*1*) *Initial yellowtail flounder possession limit.* The initial yellowtail flounder possession limit is specified under § 648.86(g), unless adjusted pursuant to paragraph (a)(3)(iv)(C)(*2*) and (*3*) of this section.

(*2*) *Implementation of yellowtail flounder possession limit for Western and Eastern U.S./Canada Areas.* When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall prohibit, through rulemaking consistent with the Administrative Procedure Act, retention of yellowtail flounder for vessels fishing in the Western U.S./Canada Area and close the Eastern U.S./Canada Area as specified under paragraph (a)(3)(iv)(E) of this section.

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv) (A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area.* When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels fishing with gear capable of catching groundfish, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for haddock within the SAP identified as the Closed Area II Haddock Access Area, described in paragraph (b)(4) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. The reports must include at least the following information: Total pounds/kilograms of cod, haddock and yellowtail flounder caught (and total lb of cod, haddock, and yellowtail flounder discarded).

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding.* At any time, the Regional Administrator, in

consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(b) *Special Access Programs.* A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*—(i) *Implementation through framework.* A SAP may be proposed by the Council and approved by NMFS through the framework process described under § 648.90, or by the Regional Administrator through the expedited process, provided the SAP meets the requirements specified in paragraph (b)(1)(iii) of this section.

(ii) *Expedited implementation.* A SAP may be approved by the Regional Administrator, in consultation with the Council, provided the SAP meets the requirements specified in paragraph (b)(1)(iii) of this section, and provided the impacts of the SAP fall within the range of the impacts analyzed in paragraphs (b) (3) through (6) of this section (*i.e.*, CA II Yellowtail Flounder SAP, CA II Haddock SAP, CA I Hook Gear Haddock SAP and SNE/MA Winter Flounder SAP) or a future management action. If the SAP meets the criteria specified in paragraph (b)(1)(iii) of this section, the Regional Administrator will notify the Council of the receipt of the SAP proposal within 21 days from the date the application is received. NMFS will then publish a notice in the **Federal Register** requesting comment on the proposed SAP, allowing a 30-day comment period. Within 60 days from the end of the comment period, after consideration of comments from the public and the Council, the Regional Administrator will make a determination of the approvability of the SAP. Notification of an approved SAP will be made through notification in the **Federal Register**.

(iii) *Requirements for implementing a SAP.* In order to be approved and implemented, a SAP must meet the following requirements:

(A) Sufficient information must be available to determine that the SAP would not adversely impact efforts to control fishing mortality on stocks of concern (*i.e.*, stocks where overfishing is occurring or that are overfished);

(B) Vessels fishing under the SAP could only harvest and land NE multispecies stock(s) in which the previous year's catch was less than the allocated TAC for that stock;

(C) The SAP must not result in exceeding this TAC of the harvested stock, causing a stock to become overfished, or result in overfishing;

(D) The number of vessels or trips that may occur in the access program must be specified, as well as the estimated catch rate of all species that are likely to be caught;

(E) Implementation of the SAP must not alter measures that minimize, to the extent practicable, the adverse impact of fishing activity on habitat;

(F) The SAP must incorporate one or more of the following provisions in order to ensure there is no increase in fishing mortality on any stock of concern: Adoption of a bycatch TAC for a stock of concern, adequate observer coverage to monitor the catch of stocks of concern, specialized gear or fishing techniques to avoid or reduce stocks of concern, mitigation of increased fishing mortality on the stock of concern in the SAP through overall effort reduction or effort redirection in order to avoid a net increase in bycatch mortality;

(G) The SAP must occur within a defined area;

(H) Participation in the SAP must not be limited to vessels from a particular state or subdivision;

(I) The SAP must reduce discards and discard mortality to the extent practicable;

(J) The SAP must specify the type of data reporting required to monitor the status of harvest and include a realistic plan of implementation; and

(K) The Regional Administrator must be able to conclude that adherence to the conditions of the SAP can be assured in light of available enforcement resources and the enforcement record of vessel owners and operators of vessels.

(2) *SAPs harvesting stocks other than NE multispecies*—(i) *Implementation through framework.* A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90, or by the Regional Administrator through the expedited process, provided the non-multispecies SAP meets the requirements specified under paragraph (b)(2)(iii) of this section.

(ii) *Expedited implementation.* A non-multispecies SAP may be approved by the Regional Administrator according to the same procedures specified in paragraph (b)(1)(ii) of this seciton, provided the non-multispecies SAP meets the requirements of paragraph (b)(2)(iii) of this section.

(iii) *Requirements for implementing a non-multispecies SAP.* In order to be approved and implemented, a SAP must meet the following requirements:

(A) Sufficient information must be available to determine that the SAP would not adversely impact efforts to control fishing mortality on stocks of concern (*i.e.*, stocks where overfishing is occurring or that are overfished);

(B) The number of vessels or trips that may occur in the access program must be specified, as well as the estimated catch rate of all species that are likely to be caught;

(C) Implementation of the SAP must not alter measures that minimize, to the extent practicable, the adverse impact of fishing activity on habitat;

(D) The SAP must incorporate one or more of the following provisions in order to ensure there is no increase in fishing mortality on any stock of concern: Adoption of a bycatch TAC for a stock of concern, adequate observer coverage to monitor the catch of stocks of concern, specialized gear or fishing techniques to avoid or reduce stocks of concern, mitigation of increased fishing mortality on the stock of concern in the SAP through overall effort reduction or effort redirection in order to avoid a net increase in bycatch mortality;

(E) The SAP must occur within a defined area;

(F) Participation in the SAP must not be limited to vessels from a particular state or subdivision;

(G) The SAP must reduce discards and discard mortality to the extent practicable;

(H) The SAP must specify the type of data reporting required to monitor the status of harvest and include a realistic plan of implementation; and

(I) The Regional Administrator must be able to conclude that adherence to the conditions of the SAP can be assured in light of available enforcement

resources and the enforcement record of vessel owners and operators of vessels.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area.* The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA

Point	N. Lat.	W. Long.
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′ (the U.S.–Canada Maritime Boundary)
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period June 1 through December 31.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the areas specified in paragraphs (b)(3)(v)(A) and/or (B) of this section, provided the vessel fishes in the additional area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the other area(s) fished and fishes during such time as specified in paragraph (b)(4)(iii) of this section (*i.e.*, CA II Haddock SAP). The declaration areas are as follows:

(A) Closed Area II Haddock Access Area, as defined in paragraph (b)(4)(ii) of this section.

(B) The Closed Area II Haddock Access Area, as defined in paragraph (b)(4)(ii) of this section, and the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under a NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net.

(4) *Closed Area II Haddock SAP*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Haddock SAP, and may fish in the Closed Area II Haddock Access Area, as described in paragraph (b)(4)(ii) of this section, for the period specified in paragraph (b)(4)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described under paragraph (a)(1)(ii) of this section is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area is available from the Regional Administrator upon request.

(ii) *Closed Area II Haddock Access Area.* The U.S./Canada Closed Area II Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
CIIH 1	42°12′	67°11′ (intersection of 42°12′ with the U.S./Canada Maritime Boundary)
CIIH 2	42°11′	67°20′
CII 3	42°22′	67°20′ (the U.S./Canada Maritime Boundary)
CIIH 1	42°12′	67°11′ (intersection of 42°12′ with the U.S./Canada Maritime Boundary)

(iii) *Season.* Eligible vessels may fish in the Closed Area II Haddock SAP during the period May 1 through February 28 (or 29).

(iv) *VMS.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide

notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(4)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Haddock SAP must declare into this area through VMS in accordance with instructions to be provided by the Regional Administrator. In addition to fishing in the Closed Area II Haddock SAP, a vessel, on the same trip, may also declare its intent to fish in the areas specified in paragraphs (b)(4)(v)(A) and (B) of this section, provided the vessel fishes under the more restrictive provisions of the areas declared and fishes during such time as specified in paragraph (b)(3)(iii) of this section (*i.e.*, CA II Yellowtail flounder SAP). The declaration areas are as follows:

(A) Closed Area II Yellowtail Flounder Access Area, as defined in paragraph (b)(3)(ii) of this section.

(B) The Closed Area II Yellowtail Flounder Access Area, as defined in paragraph (b)(3)(ii) of this section and the area outside of Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section.

(vi) *Number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, there is no limit on the number of trips per vessel.

(vii) *Maximum number of trips.* Unless otherwise restricted by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, there is no maximum number of trips specified for the fishery.

(viii) *Trip limits.* A vessel fishing in the Closed Area II Haddock SAP may not possess more than one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section. The trip limit for haddock is specified under § 648.86(a).

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Haddock SAP, as specified in paragraph (b)(4)(v) of this section, may not fish, during the trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under a NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net.

(5) *Closed Area I Hook Gear SAP*—(i) *Eligibility.* Vessels issued a NE multispecies permit and fishing with hook gear are eligible to participate in the Closed Area I Hook Gear SAP, and may fish in Closed Area I Hook Gear Access Area, as described in paragraph (b)(5)(ii) of this section, for the period specified in paragraph (b)(5)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the area is not closed as specified under paragraph (b)(5)(vii) of this section. Copies of a chart depicting this area is available from the Regional Administrator upon request.

(ii) *The Closed Area I Hook Gear Access Area.* The Closed Area I Hook Gear Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR ACCESS AREA

Point	N. Lat.	W. Long.
CAI Hk 1	41°24.5′	69°18.5′
CAI Hk 2	41°25.5′	69°14.5′
CAI Hk 3	41°8′	68°59.5′
CAI Hk 4	41°7′	69°4′
CAI Hk 1	41°24.5′	69°18.5′

(iii) *Season.* Eligible vessels may fish in the Closed Area I Hook Gear SAP during the period September 16 through December 31, provided the area is not closed according to the provisions specified in paragraph (b)(5)(vi) of this section.

(iv) *VMS.* Eligible vessels intending to fish in the Closed Area I Hook Gear SAP must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* Prior to departure from port, a vessel intending to participate in the Closed Area I Hook Gear SAP must declare into that area through VMS, in accordance with instructions to be provided by the Regional Administrator.

(vi) *Cod trip limit.* A vessel fishing in the Closed Area I Hook Gear SAP may fish for, possess, and land up to 400 lb (181.4 kg) of cod per trip.

(vii) *Closure.* At any time during the fishing year, if the Regional Administrator projects that 35 mt of cod will be caught from with the Closed Area I Hook Gear Access Area, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, shall close the Closed Area I Hook Gear Access Area.

(viii) *Observers.* Industry-funded observers are required on all trips declared into the Closed Area I Hook Gear SAP.

(6) *SNE/MA Winter Flounder SAP.* A vessel fishing for summer flounder west of 72° 30′ W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under a NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder of board;

(iii) The vessel must not be fishing under a NE multispecies DAS; and

(iv) Fishing for, retention, and possession of NE multispecies other than winter flounder is prohibited.

15. Section 648.86 is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*— (1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under a NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under a NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments*—(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional

Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) *Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC.* At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*—(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) *GB Hook Gear Cod Trip Limit Program.* A NE multispecies DAS vessel electing to fish exclusively with hook gear for the entire fishing year may land cod in the amounts specified in paragraphs (b)(2)(iii)(A) through (D) of this section, during the seasons specified, provided the vessel annually declares into the GB Hook Gear Cod Trip Limit Program as described in § 648.4(c)(2)(iii)(B). Vessels fishing under the GB Hook Gear Cod Trip limit Program are prohibited from fishing north of the exemption line defined under paragraph (b)(4) of this section. Vessels may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b). Seasonal restrictions of this program are as follows:

(A) *July 1 through September 15:* Vessels are confined to landing NE multispecies on Sunday through Thursday only, and may land up to 2,000 lb (907.2 kg) of cod per DAS. No multispecies landings are allowed on Friday or Saturday.

(B) *September 16 through December 31:* Vessels may land up to 600 lb (272.2 kg) of cod per DAS, on any day of the week.

(C) *January 1 through March 31:* Vessels may land up to 2,000 lb (907.2 kg) of cod per DAS, on any day of the week.

(D) *April 1 through June 30:* Vessels are prohibited from fishing under a NE multispecies DAS.

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00′ N. lat. and running eastward along 42°00′ N. lat. until it intersects with 69°30′ W. long., then northward along 69°30′ W. long. until it intersects with 42°20′ N. lat., then eastward along 42°20′ N. lat. until it intersects with 67°20′ W. long., then northward along 67°20′ W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to

transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved].

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. Lat.	W. Long.
SYT13	(1)	70°00′
SYT12	41°20′	70°00′
SYT11	41°20′	69°50′
SYT10	41°10′	69°50′
SYT9	41°10′	69°30′
SYT8	41°00′	69°30′
SYT7	41°00′	68°50′
USCA1	42°20′	68°50′
USCA12	42°20′	67°40′
NYT1	43°50′	67°40′
NYT2	43°50′	66°50′
NYT3	44°20′	66°50′
NYT4	44°20′	67°00′

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA—Continued

Point	N. Lat.	W. Long.
NYT5	(2)	67°00′

[1] South facing shoreline of Cape Cod, MA.
[2] East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements: (A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods April through May, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. Lat.	W. Long.
SYT1	38°00′	(1)
SY2	38°00′	72°00′
SY3	39°00′	72°00′
SY4	39°00′	71°40′
SY5	39°50′	71°40′
USCA2	39°50′	68°50′
SYT7	41°00′	68°50′
SYT8	41°00′	69°30′
SYT9	41°10′	69°30′
SYT10	41°10′	69°50′
SYT11	41°20′	69°50′
SYT12	41°20′	70°00′
SYT13	(2)	70°00′

[1] East facing shoreline of Virginia.
[2] South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements: (A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess

on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The framework adjustment must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5-year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector may be subject to enforcement action. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless otherwise specified, all vessels fishing under an approved Sector must adhere to the following NE multispecies management measures: Permitting restrictions, reporting and recordkeeping requirements, gear restrictions designed to minimize habitat impacts, and year-round closed areas.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(2) *Operations Plan.* Each Sector must submit an Operations Plan to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The Operations Plan must contain at least the following elements:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope

of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) The sector and all participants in the sector would be jointly and severally liable for any violations of applicable Federal fishery regulations.

(c) *Approval of a Sector by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (c)(1) of this section have been determined to comply with the requirements of this section, NMFS will solicit public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator, in consultation with the Council, may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (e)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (d) of this section, and all Sector participants comply with the requirements of the Operations Plan and the requirements of this section.

(i) *GB Cod Hook Sector Area (GBCHSA).* The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. Lat.	W. Long.
HS 1	70°00′	(1)
HS 2	70°00′	42°20′
HS 3	67°40′	42°20′
HS 4	67°40′	41°10′
HS 5	67°10′	41°10′
HS 6	67°10′	41°00′
HS 7	67°00′	41°00′
HS 8	67°00′	40°50′
HS 9	66°50′	40°50′
HS 10	66°50′	40°40′
HS 11	66°40′	40°40′
HS 12	66°40′	40°30′ (intersection with EEZ)

GEORGES BANK COD HOOK SECTOR AREA—Continued

Point	N. Lat.	W. Long.
Follow the U.S. EEZ boundary south to HS13		
HS 13	66°44.3′	41°30′ (intersection with EEZ)
HS 14	66°45.5′	39°00′
HS 15	71°40′	39°00′
HS 16	71°40′	(2)

[1] The east facing shoreline of Cape Cod, MA

[2] The south facing shoreline of Rhode Island

(ii) *Eligibility.* All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation.* For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(1)(i) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements.* A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

17. Section 648.88 is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally.

(2) *Restrictions:*

(i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

18. Section 648.89 is revised to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and

recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	22 (58.4 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions*—(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

19. Section 648.90 is revised to read as follows:

§ 648.90 NE multispecies assessment and framework procedures and specifications.

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) *NE multispecies.* (1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to

continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, *etc.*) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a

proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to

protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS.* The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55(d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) Category C and D vessels that lease NE multispecies DAS. (A) A monkfish Category C or D vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS − 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

21. In Section 648.94, paragraph (f) is revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

22. In Section 648.322, paragraph (b)(6) is revised to read as follows:

§ 648.322 Skate possession and landing restrictions.

* * * * *

(b) * * *

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

* * * * *

[FR Doc. 04–1541 Filed 1–27–04; 8:45 am]

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Federal Register

Thursday,
January 29, 2004

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Training and Education Cost Principle; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2001–021]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) ''Training and education costs'' cost principle.

DATES: Interested parties should submit comments in writing on or before March 29, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–021@gsa.gov.* Please submit comments only and cite FAR case 2001–021 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed amendment to FAR 31.205–44, Training and education costs, is intended to increase the clarity of this cost principle and to make it consistent with recent statutory changes that cover payment of costs for Federal employee academic degree training. The proposed rule makes training and education costs generally allowable, except for training and education for the sole purpose of obtaining an academic degree or as a means of qualifying for a position that requires a degree, as well as six public policy exceptions that are retained from the current cost principle. The reasonableness of specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201–3, Determining reasonableness.

A proposed rule was published in the **Federal Register** at 67 FR 34810, May 15, 2002. In response to the public comments received (see Section B, below), the Councils are proposing additional changes to FAR 31.205–44. Since the changes result in a rule that differs significantly from the first proposed rule, it is being published as a second proposed rule. It is noted that an amendment was published in the **Federal Register** at 67 FR 40136, June 11, 2002, to correct an error in the **SUPPLEMENTARY INFORMATION** section accompanying the first proposed rule. The major differences between the two proposed rules are summarized as follows:

1. The Councils eliminated the disparate treatment of full-time and part-time undergraduate education by deleting FAR 31.205–44(b)(1)(i). The cost of full-time undergraduate level education will be allowable. (See Public Comment 3, paragraph 3, below.)

2. The cost allowability provisions for full-time graduate level education at FAR 31.205–44(b)(2)(ii) are relocated to a separate new paragraph (d). (See Public Comment 3, paragraph 4, below.)

3. The cost of salaries for attending part-time and full-time undergraduate level classes and part-time graduate level classes during working hours are unallowable, subject to an exception ''when unusual circumstances do not permit attendance at such classes outside of regular working hours.'' FAR 31.205–44(b)(2) was deleted and coverage included in a new paragraph (c). (*See* Public Comment 3, paragraph 5, below.)

B. Public Comments

Six respondents submitted comments on the first proposed rule. A discussion of their comments is provided below.

Eliminate the Cost Principle

Comment 1: FAR 31.205–44 should be eliminated and the allowability of training and education costs should be governed by the general reasonableness provisions of FAR 31.201–3. The elimination of all thresholds and other allowability criteria can be accomplished without jeopardizing safeguards or increasing the risk to the Government.

Councils' response: Nonconcur that the cost principle should be eliminated. The argument for eliminating the training and education cost principle in its entirety is not compelling. There are several expressly unallowable costs in the current cost principle that are considered necessary for sound public policy reasons and are not covered elsewhere in the FAR. Concur that the reasonableness of specific contractor training and education costs can best be assessed by reference to FAR 31.201–3, Determining reasonableness.

Overtime Costs

Comment 2: Delete the proposed FAR 31.205–44(a), which makes overtime pay for training and education unallowable. The number of instances in which an employee is paid overtime for training and education do not justify the costs for tracking and treating overtime payments as unallowable costs.

Council's Response: Nonconcur. It would not be sound public policy to reimburse overtime pay for training and education.

Restrictive, Confusing, and Contradictory Conditions

Comment 3: The language in proposed FAR 31.205–44(b) regarding full-time, part-time, undergraduate, and graduate education costs is restrictive, confusing and contradictory. The differing allowability treatment of these types of education costs is confusing and inconsistent with each other and with the accepted concepts of upward mobility and job retraining. The proposed paragraph should be eliminated, or at a minimum, the language should only list items that are unallowable.

Councils' Response: Concur that language in paragraph (b) of the first proposed rule is restrictive, confusing and contradictory; changes in this second proposed rule eliminate the confusion and some of the cost allowability limitations (as discussed below). Nonconcur that all of the cost allowability limitations should be removed; the cost allowability limitations that remain represent sound public policy. Concur that only unallowable items should be listed; the structure of the second proposed rule is to list only the specifically unallowable costs.

FAR 31.205–44(b)(1)(i) of the first proposed rule and the current FAR language disallow full-time undergraduate level education costs, but implicitly allow part-time undergraduate level education costs. The Councils believe that education costs should not become unallowable just because an employee elects to accelerate the learning process. Imposing restrictions that may cause

some employees to slow the learning process serves no purpose. Moreover, such a bifurcated approach to the allowability of contractor employee education costs is inconsistent with recent statutory changes that now broadly authorize Government payment of Federal employee degree costs (Section 1121 of Public Law 106–398, the FY01 Defense Authorization Act, and Section 1331 of Public Law 107–296, the Homeland Security Act). Therefore, the disparate treatment of full-time and part-time undergraduate education has been eliminated by deleting paragraph (b)(1)(i) of the first proposed rule.

To further simplify the cost principle, the Councils extracted the limitations regarding the unallowability of full-time graduate level education costs from paragraph (b)(1)(ii) of the first proposed rule and made them a separate new paragraph (c) in this second proposed rule.

Paragraph (b)(2) of the first proposed rule disallows the costs of salaries for attending undergraduate or graduate level classes on a part-time basis, except for attending such classes during working hours where circumstances do not permit attendance before or after regular work hours. Similarly, the current FAR coverage allows the salaries of employees for attending undergraduate or graduate level classes on a part-time basis only where circumstances do not permit the operation of classes or attendance at classes after regular working hours, but is also capped at 156 hours per year. The Councils believe that the cost of salaries for attending part-time and full-time undergraduate or part-time graduate level classes should remain unallowable, subject to an exception ''when unusual circumstances do not permit attendance at such classes outside of regular working hours.'' This policy is contained in a separate new paragraph (c) in this second proposed rule.

Advance Agreement

Comment 4: If the Councils still believe that FAR 31.205–44(b) is required, then the provisions at FAR 31.205–44(h), which allow and establish criteria for Advance Agreements, would have to be reinstated. Without this reinstatement, costs that have been allowable in the past could become unallowable.

Councils' Response: Nonconcur. The Councils believe that in light of the changes made, the need for an advance agreement provision has been eliminated.

Administrative Costs of College Savings Plan

Comment 5: With the advent of ''529 Plans'' (College Savings Plans), companies are beginning to sponsor such plans for employees and their dependents, including paying the administrative costs. The Councils should make clear that the proposed language in FAR 31.205–44(e) does not make the administrative costs of college savings plans unallowable.

Councils' Response: The cost principle does not address the administrative costs of such plans; therefore, the administrative costs are allowable, subject to the reasonableness criteria at FAR 31.201–3. However, any contributions to the plan by the company for employee dependents would be unallowable under the redesignated paragraph (g) in this second proposed rule.

Public Policy

Comment 6: If one agrees that training and educating employees is good public policy, then there is no need for the five ''public policy exceptions'' to cost allowability, and the cost principle is unnecessary.

Councils' Response: The Councils support upward mobility, job retraining, and educational advancement. Training that is beneficial for the contractor, is also beneficial for the Government. But, while Government support for training and education is sound overall public policy, there are certain related costs the taxpayers should not reimburse. The Councils believe the six public policy exceptions in this second proposed rule are appropriate.

Job Relatedness

Comment 7: The job relatedness requirement should be eliminated in proposed FAR 31.205–44(b)(1)(ii). The original Background section accompanying the first proposed rule published in the **Federal Register** dated May 15, 2002, indicated that the Councils proposed the elimination of this requirement together with a supporting rationale. The commenter agrees with that rationale and recommends the requirement be deleted.

Councils' Response: Nonconcur. The language contained in the Background section accompanying the first proposed rule was published in error. The Background section language was corrected in the **Federal Register** at 67 FR 40136, June 11, 2002. The current policy which requires a relationship between education and work for full-time graduate level education is retained.

Two-Year Maximum at Undergraduate Level

Comment 8: The proposed rule should be revised because FAR 31.205–44(b)(1)(ii) can reasonably be interpreted as establishing a maximum two (2) year completion requirement at both the undergraduate and postgraduate levels.

Councils' Response: Nonconcur. The Councils believe it is clear in the new FAR 31.205–44(d) that the two-year limitation only applies to the full-time graduate level education.

Suitable Education

Comment 9: The proposed FAR 31.205–44(d) should be revised to define ''suitable'' public education and permit ''suitable'' private education where no ''suitable'' public education exists. The proposed rule is ambiguous and restrictive in scope due to the lack of a definition and the lack of an affirmative statement permitting private school education.

Councils' Response: Nonconcur. A definition of the term ''suitable'' would limit flexibility. In addition, the proposed rule already allows the use of private education and therefore, an affirmative statement to this effect is not necessary.

Vocational Training and Specialized Programs

Comment 10: Recommend the reinsertion of the current FAR sections addressing vocational training, specialized programs and other expenses relating to maintenance and normal depreciation or fair rental on facilities owned or leased by contractors for training purposes. The deletion of these sections will place an undue financial burden on Government contractors and small businesses and will discourage the Government contractor workforce from pursuing non-traditional types of training and education.

Councils' Response: Nonconcur. The allowability of these types of expenses did not change in the proposed rule. The structure of the proposed rule is to list only the specifically unallowable costs.

Format

In the past, the Councils have received several public comments suggesting a standardized format for cost principles contained in FAR part 31. While they believe that this second proposed rule conforms to the suggested format, the Councils are interested in comments in this regard. If additional standard format changes are deemed appropriate, interested parties are

required to submit a rewritten cost principle in the proposed format as part of their response to this proposed rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–021), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 23, 2004.

Ralph de Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–44 to read as follows:

31.205–44 Training and education costs.

Training and education costs are allowable, except as follows:

(a) The costs of education and training for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement are unallowable.

(b) Overtime compensation for training and education is unallowable.

(c) The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.

(d) Costs of tuition, fees, training materials and textbooks, subsistence, and salary and any other costs in connection with full-time graduate level education are unallowable, except where the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and is limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships, are unallowable.

(f) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(g) Costs of university and college plans for employee dependents are unallowable.

[FR Doc. 04–1876 Filed 1–28–04; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 29, 2004

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning
- Special areas—
  - Tongass National Forest, AK: roadless area conservation; published 12-30-03

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; published 1-29-04

FEDERAL COMMUNICATIONS COMMISSION

Radio services special:
- Private land mobile services—
  - Low power operations in 450-470 MHz band; applications and licensing; correction; published 1-29-04

Radio stations; table of assignments:
- Nebraska; published 1-6-04
- New Mexico; published 1-6-04
- Texas; published 1-6-04
- Utah; published 1-6-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
- Chesapeake Bay, MD—
  - Cove Point Liquefied Natural Gas Terminal; safety and security zone; published 12-30-03

Safety zones, security zones, special local regulations, and drawbridge operations; temporary rules; quarterly listing; published 1-29-04

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Organizations and operations—
  - Loan participation regulations; definition clarifications; published 12-30-03

Share insurance and appendix—
- Share insurance regulations; clarification and simplification; published 12-30-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Organic producers and marketers; exemption from assessments for market promotion activities; comments due by 2-2-04; published 12-30-03 [FR 03-31945]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Gulf of Alaska groundfish; comments due by 2-2-04; published 12-2-03 [FR 03-29940]

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Patent and Trademark Office

Trademark cases:
- Registrations; amendment and correction requirements; comments due by 2-2-04; published 12-18-03 [FR 03-31094]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Climate change:
- Voluntary Greenhouse Gas Reporting Program; general guidelines; comment request and public workshop; comments due by 2-3-04; published 12-5-03 [FR 03-29983]

Worker Safety and Health; chronic beryllium disease prevention programs; comments due by 2-6-04; published 12-8-03 [FR 03-30287]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Ozone Air Quality; State and Tribal 8-hour designation recommendations
  - Agency responses; availability; comments due by 2-6-04; published 12-10-03 [FR 03-30582]

Air quality implementation plans; approval and promulgation; various States:
- Kentucky and Indiana; comments due by 2-4-04; published 1-5-04 [FR 04-00011]

Air quality planning purposes; designation of areas:
- Alabama; comments due by 2-5-04; published 1-6-04 [FR 04-00211]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Superfund program:
- Carbamates and carbamate-related hazardous waste streams and inorganic chemical manufacturing processes waste; reportable quantity adjustments; comments due by 2-2-04; published 12-4-03 [FR 03-30166]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
- Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety:
- Port Hueneme Harbor, CA; security zone; comments due by 2-4-04; published 1-5-04 [FR 04-00030]

HOMELAND SECURITY DEPARTMENT

Nonimmigrant classes:
- Aliens—
  - Special registration requirements; 30-day and annual interview requirements suspended; comments due by 2-2-04; published 12-2-03 [FR 03-30120]

United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT); Biometric Requirements; implementation; comments due by 2-4-04; published 1-5-04 [FR 03-32331]

INTERIOR DEPARTMENT

Indian Affairs Bureau

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- Robinson Rancheria of Pomo Indians, CA; comments due by 2-3-04; published 12-30-03 [FR 03-32042]

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Land Management Bureau

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- Grazing administration—
  - Livestock grazing on public lands exclusive of Alaska; comments due by 2-6-04; published 12-8-03 [FR 03-30264]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent regulatory programs for non-Federal and non-Indian lands:
- State program amendments; procedures and criteria for approval or disapproval; comments due by 2-2-04; published 12-3-03 [FR 03-29756]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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SECURITIES AND EXCHANGE COMMISSION

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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AeroSpace Technologies of Australia Pty Ltd.; comments due by 2-2-04; published 12-29-03 [FR 03-31847]

Airbus; comments due by 2-4-04; published 1-5-04 [FR 04-00051]

BAE Systems (Operations) Ltd.; comments due by 2-4-04; published 1-5-04 [FR 04-00050]

Boeing; comments due by 2-2-04; published 12-18-03 [FR 03-31180]

Dornier; comments due by 2-4-04; published 1-5-04 [FR 04-00049]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 2-4-04; published 1-5-04 [FR 04-00047]

GARMIN International Inc.; comments due by 2-3-04; published 12-30-03 [FR 03-31978]

Goodrich Avionics Systems, Inc.; comments due by 2-2-04; published 12-3-03 [FR 03-30074]

Gulfstream Aerospace LP; comments due by 2-6-04; published 1-7-04 [FR 04-00271]

Hamilton Sundstrand Corp.; comments due by 2-2-04; published 12-2-03 [FR 03-29904]

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Airbus Model A300 B4-600, -B4-600R, -F4-600R, A310-200 and -300 series airplanes; comments due by 2-5-04; published 1-6-04 [FR 04-00239]

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2673/P.L. 108–199

Consolidated Appropriations Act, 2004 (Jan. 23, 2004; 118 Stat. 3)

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