

Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs), i.e., multi-walled carbon nanotubes (PMN P-08-177) and single-walled carbon nanotubes (PMN P-08-328). These chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. EPA published the SNURs using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on these rules. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA also intends to publish in the **Federal Register**, under separate notice and comment rulemaking procedures, proposed SNURs for these two chemical substances.

**DATES:** This final rule is effective August 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8773; e-mail address: [chu.karen@epa.gov](mailto:chu.karen@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Does this Action Apply to Me?**

A list of potentially affected entities is provided in the **Federal Register** of June 24, 2009 (74 FR 29982) (FRL-8417-6). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

##### **II. What Rules are Being Withdrawn?**

In the **Federal Register** of June 24, 2009 (74 FR 29982), EPA issued several direct final SNURs, including SNURs for the two chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with 40 CFR 721.160(c)(3)(ii), EPA is withdrawing the rules issued for multi-walled carbon nanotubes (PMN P-08-177) and single-walled carbon nanotubes (PMN P-08-328) because the Agency received a notice of intent to submit adverse comments. EPA intends to propose

SNURs for these two chemical substances via notice and comment rulemaking in a future **Federal Register** document.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNURs for these chemical substances which are being withdrawn was established at EPA-HQ-OPPT-2008-0252. That record includes information considered by the Agency in developing these rules and the notice of intent to submit adverse comments.

##### **III. How Do I Access the Docket?**

To access the electronic docket, please go to <http://www.regulations.gov> and follow the online instructions to access docket ID no. EPA-HQ-OPPT-2008-0252. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** document of June 4, 2009 (74 FR 29982). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

##### **IV. What Statutory and Executive Order Reviews Apply to this Action?**

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** document of June 24, 2009 (74 FR 29982). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

##### **V. Congressional Review Act**

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

##### **List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 17, 2009.

**Wendy C. Hamnett,**

*Acting Director, Office of Pollution Prevention and Toxics.*

■ Therefore, 40 CFR part 721 is amended as follows:

##### **PART 721—[AMENDED]**

■ 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

##### **§ 721.10155 [Removed]**

■ 2. By removing § 721.10155.

##### **§ 721.10156 [Removed]**

■ 3. By removing § 721.10156.

[FR Doc. E9-20150 Filed 8-20-09; 8:45 am]

**BILLING CODE 6560-50-S**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 0809031176-91213-03]

**RIN 0648-AX25**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands (Amendment 90) and Gulf of Alaska Groundfish (Amendment 78); Limited Access Privilege Programs**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations implementing Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This regulation amends the Bering Sea and Aleutian Islands Amendment 80 Program and the Central Gulf of Alaska Rockfish Program to allow post-delivery transfers of cooperative quota to cover overages. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals

and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

**DATES:** Effective September 21, 2009.

**ADDRESSES:** Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the categorical exclusion memoranda, and the Regulatory Impact Review/Final Regulatory Flexibility Analyses (RIR/FRFA) prepared for this action as well as the Programmatic Supplemental Environmental Impact Statement prepared for Alaska groundfish fisheries may be obtained from the NMFS Alaska Region website at: <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill or Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program

(Rockfish Program). Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668), and regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210). These regulations are located at 50 CFR part 679.

#### **Background**

NMFS issued quota share (QS) under the Amendment 80 Program and the Rockfish Program. Under the Amendment 80 Program, NMFS issued QS to persons based on their qualifying harvest histories using specific trawl catcher/processor vessels in six BSAI non-pollock groundfish fisheries during 1998 through 2004. Under the Rockfish Program, NMFS issued QS to persons based on their qualifying harvest histories using trawl catcher vessels and trawl catcher/processors of rockfish species and species harvested incidentally in Central Gulf of Alaska rockfish fisheries during 1996 through 2002. These two programs are commonly known as limited access privilege programs (LAPPs) because the participants may receive exclusive access to fishery resources if specific conditions are met. Each year, the person issued QS may participate in either a fishery cooperative with other QS holders or in a limited access fishery with other non-cooperative participants who hold QS. The total amount of QS assigned to all members of a cooperative yields an amount of cooperative quota (CQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of groundfish, in specific fisheries, in a given year.

Additionally, a cooperative also receives a specific amount of CQ that may be used for the incidental catch of a specific amount of crab or halibut. Incidentally caught crab or halibut, commonly called prohibited species catch (PSC), cannot be retained, processed, or sold. QS holders participating in the limited access fishery are not assigned an exclusive harvest or PSC use privilege, but may compete for the allocation of groundfish and PSC remaining after CQ has been assigned to all cooperatives.

After joining a cooperative or the limited access fishery, a person may participate in only that cooperative or the limited access fishery for that calendar year. A person who joins a cooperative must assign the individual fishing quota derived from his or her QS (prior to the start of the fishing season for that LAPP) to the cooperative and the specific vessels that will be fishing for that cooperative. For example, persons wishing to participate in an Amendment 80 cooperative must assign their QS and vessels to an Amendment 80 cooperative by November 1 of each year to be eligible to fish in a cooperative for the following calendar year. Once a person assigns his QS or vessel to a cooperative, he may not reassign his QS or vessel to another cooperative or the limited access fishery during the calendar year for which that QS or vessel is assigned.

Table 1 shows the specific groundfish species for which NMFS issues QS and the PSC species for which CQ may be issued if a person joins a cooperative under the Amendment 80 Program and Rockfish Program.

Table 1. Groundfish and PSC Species that may Yield CQ in the Amendment 80 Program and Rockfish Program

Groundfish species for which QS is issued and that can yield CQ	PSC species for which CQ can be issued
<b>BSAI Amendment 80 Program</b>	
Aleutian Islands Pacific ocean perch	Pacific halibut Zone 1 - Bristol Bay red king crab, <u>Chionoecetes opilio</u> crab, and <u>C. bairdi</u> crab Zone 2 - <u>C. opilio</u> crab and <u>C. bairdi</u> crab
Atka mackerel	
Flathead sole	
Pacific cod	
Rock sole	
Yellowfin sole	
<b>Central GOA Rockfish Program</b>	
Northern rockfish (catcher vessels & catcher/processors)	Pacific halibut
Pacific ocean perch (catcher vessels & catcher/processors)	
Pelagic shelf rockfish (catcher vessels & catcher/processors)	
Thornyhead rockfish (catcher vessels & catcher/processors)	
Trawl sablefish (catcher vessels & catcher/processors)	
Rougheye rockfish (catcher/processors only)	
Shortraker rockfish (catcher/processors only)	
Pacific cod (catcher vessels only)	

The mechanisms for joining a cooperative, the process for issuing CQ for groundfish or PSC species, and the monitoring and enforcement provisions necessary to ensure proper accounting of catch under the Amendment 80 and Rockfish Programs are described in detail in the final rules implementing those LAPPs and are not repeated here (for the Amendment 80 Program see 72 FR 52668, September 14, 2007; for the Rockfish Program see 71 FR 67210, November 20, 2006).

The size of each cooperative's annual CQ allocation is based on the amount of QS held by the members relative to the total QS pool for a given groundfish fishery. For example, a cooperative in the Amendment 80 Program composed of members holding QS equaling 40 percent of the QS pool in the yellowfin sole fishery would receive CQ to harvest 40 percent of the annual total allowable catch (TAC) of yellowfin sole that is assigned to the Amendment 80 Program. Any catch of groundfish or PSC species for which CQ is issued under the specific LAPP (i.e., either the Amendment 80 or Rockfish Program) is debited from a cooperative's CQ account.

The Amendment 80 Program and the Rockfish Program allow cooperatives to transfer their unused CQ between cooperatives. Transfers allow

cooperatives to tailor their operations to specific harvesting conditions. All transfers must be approved by NMFS before they become effective. Once a CQ transfer has been approved by NMFS, the CQ account of the transferring cooperative is debited, and the CQ account of the receiving cooperative is credited.

**CQ Overages Under Current System**

Under existing regulations, a cooperative in either the Amendment 80 Program or the Rockfish Program is prohibited from catching groundfish or PSC on an annual basis that exceeds the amount of CQ that is issued to that cooperative (see § 679.7(n)(7)(i) for the Rockfish Program and § 679.7(o)(4)(v) for the Amendment 80 Program). This prohibits a cooperative from having a negative CQ balance for a given species and subsequently receiving transferred CQ after the landing to rectify the negative CQ balance.

CQ overages by cooperatives in the Rockfish Program and Amendment 80 Program are likely to be uncommon. In 2007, the first year under the Rockfish Program, no overages of CQ occurred. Results from 2008, the second year of the Rockfish Program, and the first year of the Amendment 80 Program, are pending.

The Council recommended Amendments 90 and 78 to the FMPs to improve the fleet's flexibility, reduce the potential number of violations for overages, reduce enforcement costs, and allow more complete harvest of allocations. NMFS published a notice of availability for Amendments 90 and 78 on December 17, 2008 (73 FR 76605), and a proposed rule on January 5, 2009 (74 FR 254). More information on how overages can occur and an overview of the catch and accounting system used by NMFS and the NOAA Office for Law Enforcement to monitor CQ is described in the preamble to the proposed rule.

The comment period on the proposed rule and the notice of availability ended on February 17, 2009. Six comments were received from three individuals regarding the proposed rule and FMP amendment. Two comments supported the proposed rule, and three comments questioned specific technical aspects of the regulation. These comments did not raise new issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule. The remaining comment was not directly related to the action and did not raise new issues or concerns that have not already been addressed in the analysis prepared to support this action or the preamble to the proposed rule. After

consideration of these comments, NMFS approved Amendments 90 and 78 on March 16, 2009.

### Effects of the Action

A transfer of CQ after fish have been landed to rectify a negative CQ balance is commonly known as a post-delivery transfer. The following sections briefly describe the effects of allowing post-delivery transfers to cover CQ overages. Additional discussion of the rationale and effects of this action is provided in the preamble to the proposed rule published on January 5, 2009 (74 FR 254), and is not repeated here.

Allowing post-delivery transfers in the Amendment 80 Program and Rockfish Program can mitigate potential overages, reduce enforcement costs, and provide for more precise TAC management and more value from the harvests for participants. Post-delivery transfers also increase fleet flexibility and allow more efficient use of resources. The flexibility to complete transfers after delivery reduces the potential that some CQ will remain unharvested if a cooperative is not able to harvest its CQ allocation without the risk of an overage, and minimizes the potential for CQ overages because a CQ account can be balanced after delivery through a post-delivery transfer.

This action allows post-delivery transfers to cover CQ overages. There is no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a cooperative could undertake, but a vessel that is assigned to that cooperative may not begin a new fishing trip for that cooperative if the CQ account balance is zero or negative for any of the groundfish or PSC species CQ assigned to the cooperative. This action prohibits a person from having a negative balance in a CQ account for any species after the end of the calendar year for which that CQ permit was issued.

This rule does not modify existing regulations that require that CQ issued to a cooperative can be transferred only among other cooperatives, and that participants in a limited access fishery in either of these two LAPPs may not transfer any unused TAC to cooperatives as CQ.

Under the final rule, no member of a cooperative may use any vessel assigned to that cooperative to begin a new fishing trip for any groundfish CQ species unless the CQ balance of the cooperative for all groundfish or PSC species for which CQ is assigned is positive. The final rule defines the term "fishing trip" for purposes of this requirement to provide a clear standard for fishery participants. A fishing trip is

defined as the period beginning when a vessel operator commences harvesting any groundfish species that is assigned CQ under the relevant LAPP and ending when the vessel operator removes any processed or unprocessed groundfish CQ species from that vessel. The specific groundfish and PSC species for both LAPPs are listed above in Table 1. The definition of a fishing trip effectively extends from the first harvest of a groundfish species that is issued CQ in the applicable LAPP until the beginning of a delivery of groundfish from a catcher vessel, or the beginning of offloading processed groundfish from a catcher/processor. This definition ensures that no member of a cooperative could commence fishing for any groundfish species on the cooperative's CQ permit on any vessel until the CQ accounts of all groundfish and PSC species assigned to that cooperative are positive. This provision is intended to discourage harvesters from continuing to debit groundfish or PSC against their cooperative's CQ account for numerous fishing trips and run a negative CQ balance without ensuring that adequate unused CQ exists that can be transferred from another cooperative to cover that negative balance.

This rule prohibits a cooperative from maintaining a negative balance in its CQ accounts for any groundfish or PSC species after the end of the calendar year for which that CQ was issued. This prohibition effectively requires that all post-delivery CQ transfers must be completed by December 31 of each year. Overages that are not covered by December 31 of each year are subject to a penalty or other enforcement action. This action is expected to reduce the risk of potential overages because cooperatives would have time to balance their CQ accounts by the end of the calendar year.

### Summary of Regulatory Changes

This action makes the following changes to the existing regulatory text at 50 CFR part 679:

- Add two new paragraphs to define the term "fishing trip" at § 679.2;
- Modify the existing prohibitions at § 679.7(n)(7)(i) for the Rockfish Program and § 679.7(o)(4)(v) for the Amendment 80 Program to clarify that a person may not begin a fishing trip with a vessel assigned to a Rockfish Program cooperative or Amendment 80 Program cooperative, if that Amendment 80 or Rockfish cooperative does not hold unused CQ for all species for which CQ is assigned; and
- Add prohibitions at § 679.7(n)(7)(vi) for the Rockfish Program and § 679.7(o)(4)(vi) for the Amendment 80

Program to prohibit a person from having a negative balance in a CQ account for any species after the end of the calendar year for which that CQ permit was issued.

### Response to Comments

NMFS received six comments from three individuals regarding Amendments 90 and 78 and the proposed rule. Two commenters represent organizations of Rockfish Program and Amendment 80 Program participants that will be affected by this action. The third commenter did not indicate an affiliation.

*Comment 1:* The commenter raises general concerns about fisheries management asserting that fishery policies have been overly liberal and have not been to the benefit of American citizens. The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

*Response:* The comments are not specifically related to the proposed rule and recommend broad changes to fisheries management that are outside the scope of this action.

*Comment 2:* The commenter represents Rockfish Program participants who support this action and believe it will facilitate catch accounting in the Rockfish Program to accommodate overages. Given the careful oversight of cooperative managers, post-delivery transfers are likely to be infrequent and will address minor overages.

*Response:* NMFS notes the support for this action.

*Comment 3:* The Rockfish Program is a multi-species trawl LAPP. Trawl fisheries may catch species other than those intended, which can make it more difficult to maximize a cooperative's CQ allocation without exceeding that amount. These factors should be cited as additional rationale for this action.

*Response:* The Council addressed the factors cited by the commenter during the development of Amendments 90 and 78. Section 2.3.1 of the analysis prepared for Amendment 78 provides a detailed description of the multi-species nature of the Rockfish Program. Section 2.4 of the analysis describes the complexities harvesters face when trying to harvest a specific amount of catch in multi-species trawl fisheries and the potential effects of this action to mitigate agency and industry enforcement costs resulting from potential overages.

*Comment 4:* The definition of "fishing trip" could be subject to interpretation, and the commenter requests clarification on how this definition would apply to the Rockfish Program.

According to the proposed definition, a Rockfish Program fishing trip is defined as the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any Rockfish Program species, whether processed or unprocessed, from the vessel. A vessel is considered fishing for Rockfish Program species only when they are checked into the rockfish fishery via NMFS inseason management. The commenter assumes that this prohibition would not restrict a vessel from participating in another fishery where these species could be taken incidentally or as a directed target fishery but not a part of the Rockfish Program.

*Response:* NMFS agrees with the interpretation provided by the commenter. The regulations make it clear that the post-delivery transfer provisions apply only to the delivery of fish caught under the authority of a CQ permit. When a vessel is not fishing under a Rockfish Program fishery, fish are not harvested under a CQ permit, and the post-delivery requirement provisions do not apply.

*Comment 5:* It appears that a cooperative would not be in violation of the requirement that a vessel cannot begin a new fishing trip if two or more of its vessels are on the grounds simultaneously, and one vessel in the cooperative makes a delivery that causes the cooperative to exceed its CQ cap while other cooperative vessels are fishing. The regulations appear to allow vessels in a cooperative to complete their fishing trips, but would not allow them to begin a new fishing trip.

*Response:* NMFS agrees with the interpretation provided by the commenter. The regulations at 50 CFR 679.7(n)(7)(i) make it clear that it is prohibited to "begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned." The regulations do not prohibit vessels assigned to a cooperative from completing a fishing trip if the CQ account for a cooperative has been exceeded while those vessels are fishing.

*Comment 6:* The commenter represents Amendment 80 Program participants who support this action and believe it will facilitate catch accounting in the Amendment 80 Program, reduce the potential for CQ overages, reduce enforcement costs, and aid the fleet in fully harvesting its CQ accounts.

*Response:* NMFS notes the support for this action.

### Classification

#### *Consistency With the Magnuson-Stevens Act and Other Laws*

The Assistant Administrator for Fisheries, NOAA, has determined that Amendments 90 and 78 are necessary for the conservation and management of BSAI and GOA groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

#### *Final Regulatory Flexibility Analysis (FRFA)*

A FRFA was prepared that describes the economic impact that this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see ADDRESSES). The FRFA for this action describes the action, why this action is being proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, and other compliance requirements of the final rule. It also identifies no overlapping, duplicative, or conflicting federal rules and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities. The description of the action, its purpose, and its legal basis are described in the preamble and are not repeated here.

An IRFA was prepared and summarized in the classifications section of the preamble to the proposed rule, which was published on January 5, 2009 (74 FR 254). The public comment period ended on February 17, 2009. NMFS received three public submissions containing six unique comments on Amendments 90 and 78 and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated,

not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

The SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, and NMFS has applied and continues to apply SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations.

The FRFA contains a description and estimate of the number of small entities to which this final rule would apply. In the Rockfish Program, seven cooperatives formed during the first year (2007). The FRFA estimates that five of the seven cooperatives are large entities and two cooperatives are small entities. In the first year of the Amendment 80 Program (2008), participants formed one cooperative. The FRFA estimates that the Amendment 80 cooperative is a large entity.

This action directly regulates CQ holders who might use post-delivery transfers to cover overages. Estimates of the number of small entities holding CQ are based on estimates of gross revenues. Landings data from the most recent season for which data are available (2005 for Rockfish Program and 2007 for Amendment 80 Program) were used to estimate the number of small entities.

All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the action allows greater flexibility and a period of time in which to reconcile overages. However, empirical data available to analysts on affiliations in the Rockfish Program and the Amendment 80 Program are currently incomplete, and it is not possible to certify this outcome as provided under the Regulatory Flexibility Act. Therefore, an IRFA and a FRFA were prepared as required.

Among the three alternatives the Council considered for this action, the preferred alternative as described in this rule (Alternative 2) would best minimize potential adverse economic impacts on the directly regulated entities. Under the status quo (Alternative 1), no post-delivery transfers would be allowed and small entities would continue to be penalized for overages. Alternative 3 would have

allowed post-delivery transfers, but with more limitations and restrictions than Alternative 2, the alternative that provides small entities the most flexibility to cover overages.

**Recordkeeping and Reporting Requirements**

This final rule does not change existing reporting, recordkeeping, or other compliance requirements. Any person wishing to cover an overage will be required to engage in a transfer of CQ. The required reporting and recordkeeping for a post-delivery transfer is the same as for any other CQ transfer. NMFS Restricted Access Management Program (RAM) will continue to oversee share accounts and share use. At the time of landing, RAM will maintain a record of any overage, but instead of reporting overages to NOAA Office of Law Enforcement immediately, RAM will defer reporting until the end of the calendar year.

**Small Entity Compliance Guide**

NMFS has posted a small entity compliance guide on its website at <http://alaskafisheries.noaa.gov> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 18, 2009.

**John Oliver,**  
*Deputy Assistant Administrator For Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 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.; 3631 et seq.; Pub. L. 108–199; Pub. L. 108–447; and Pub. L. 109–479.

■ 2. In § 679.2, paragraphs (4) and (5) are added to the term “Fishing trip” to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Fishing trip* means:

\* \* \* \* \*

(4) *For purposes of § 679.7(n)(7)*, the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any processed or unprocessed Rockfish Program species from that vessel.

(5) *For purposes of § 679.7(o)(4)*, the period beginning when a vessel operator commences harvesting any Amendment 80 species and ending when the vessel operator offloads or transfers any processed or unprocessed Amendment 80 species from that vessel.

\* \* \* \* \*

■ 3. In § 679.7, paragraphs (n)(7)(i) and (o)(4)(v) are revised, and paragraphs (n)(7)(vi) and (o)(4)(vi) are added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(n) \* \* \*

(7) \* \* \*

(i) Begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned.

\* \* \* \* \*

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

\* \* \* \* \*

(o) \* \* \*

(4) \* \* \*

(v) Begin a fishing trip for any Amendment 80 species with any vessel assigned to an Amendment 80 cooperative if the total amount of unharvested CQ that is currently held by that Amendment 80 cooperative is zero or less for any species for which CQ is assigned.

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

\* \* \* \* \*

[FR Doc. E9–20208 Filed 8–20–09; 8:45 am]

**BILLING CODE 3510–22–S**