(h) *Confidentiality of proprietary information.* (1) Any materials generated or provided by a party in connection with the pre-complaint notification procedure required under § 76.1003(a) and in the course of adjudicating a program access complaint under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(2) Except as provided in paragraph (h)(3) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(3) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The opposing party will have an opportunity to respond to such requests.

(4) The persons designated in paragraphs (h) (2) and (3) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(5) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (h) (2) or (3) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(6) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

* * * * *

3. Section 76.1002 is amended by removing paragraph (c)(3)(i) and redesignating (c)(3)(ii) and (c)(3)(iii) as paragraphs (c)(3)(i) and (c)(3)(ii), respectively, and revising them to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) *Exclusive contracts and other practices and arrangements.** * *

(3) *Specific arrangements: subdistribution agreements.*—(i) *Unserved and served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served or unserved by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section.

(ii) *Limitations on subdistribution agreements.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to:

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

* * * * *

[FR Doc. 94–31561 Filed 12–22–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 909, 952, and 970

RIN 1990–AA95

Acquisition Regulation; Alteration of Organizational Conflicts of Interest Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the Department of Energy Acquisition Regulation (DEAR) to clarify certain aspects of DOE's organizational conflicts of interest (OCI) regulations. The amended regulations are intended to make the OCI regulations more easily understood and more easily followed by DOE procurement, program, and legal personnel, DOE contractors, and entities proposing to do work for DOE or its contractors.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Procurement Policy Division (HR–521.1), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8264

Edgar Merson, U.S. Department of Energy, Office of the Assistant General Counsel for Procurement and Finance (GC–61), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6902

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

DOE is one of only two Federal agencies, the other being the Nuclear Regulatory Commission, that have a statutorily based OCI system. DOE's system is founded on section 401 of Pub. L. 95–39, as that statute applied to the Energy Research and Development Administration (codified at 42 U.S.C. Sec. 5918) and section 10 of Pub. L. 95–70, as that statute applied to the Federal Energy Administration (codified at 15 U.S.C. 789). On October 1, 1977, those two agencies and others were joined to form the Department of Energy.

The proposed rule soliciting comments on proposed changes leading to this final rule was published on July 16, 1993, at 58 FR 38340. As stated there, the proposed changes were intended to clarify the preexisting DOE OCI rule.

B. Section-by-Section Analysis

Comments were received from nine commenters: four corporations, two professional societies, one individual, and two DOE procurement organizations.

1. Definitions.

At 909.570–3, we proposed to delete the phrase "the principal purpose of which" from the definition of "evaluation services" and "technical consulting and management support services." We explained that DOE's organizational conflicts of interest system should apply to contracts even where these types of services are involved in contract performance but are not the principal purpose of the contract.

Four of the commenters took exception to this change with respect to "evaluation services," and two objected with respect to "technical consulting and management support services." One concern expressed was that there would be confusion on the part of the contractors as to whether "a particular contract is for evaluation services or activities." The solicitation and contract will contain the appropriate organizational conflicts of interest provisions when DOE has determined that a specific requirement involves either or both of these types of covered services.

The remaining commenters based their objections on a concern that the result would be that organizational conflicts of interest provisions would be applied when they were not appropriate. We disagree. It is clear that the "principal purpose" language was present to limit application of organizational conflicts of interest; however, it is apparent that contracts may have minor portions of the statement of work that deserve OCI attention. For example, a contract for guard services that would not be covered per se may contain provision for incidental services to develop a plan to enhance security at the facility. Clearly, the development of such a plan, were it procured under a separate contract, would on its own be considered either evaluation services or activities or technical consulting and management support services or both. The dangers of bias, depending upon a contractor's interests, and unfair competitive advantage are both present. In fact, the plan may serve as the basis for the procurement of security enhancements under a separate contract. Yet, because it is a comparatively small part of a larger contract under the definitions that were at 909.570–3, there would be no OCI coverage under the preexisting regulations. This result is untenable.

The concern for misapplication is best answered by looking at whether the scope of the contract includes services that are properly described as "evaluation services or activities" or "technical consulting and management support services." A contract would not be covered if there is no provision for assignment of such evaluative tasks within the scope of the contract. For example, if a security guard notices a security deficiency at the facility, he or she would be expected to bring it to the supervisor's attention in the normal course of business, and this would involve no OCI implication. The mere expression of an opinion or recommendation in the performance of a contract would not give rise to OCI coverage.

In the definition of "organizational conflicts of interest," the rule proposed to delete the phrase "either directly or indirectly, through a client relationship" and insert "reasonably" to guide any test of the existence of an organizational conflict of interest with regard to a specific offeror. Three commenters objected. One commenter was concerned that the remaining phrase describing the interests to be considered in determining the presence of an organizational conflict of interest may affect or be affected by "approved technology transfer initiatives." The remaining phrase describing the interests to be taken into account is "past, present, or currently planned interests that relate to work to be performed under a Department contract." All interests, including "technology transfer initiatives" meeting that test should be evaluated by the Contracting Officer in making the OCI determination. However, one must remember that the mere existence of an interest relating to the work to be performed under the specific contract does not mean that an organizational conflict of interest is present.

A second commenter disagreed with the "relate to" language. The commenter was concerned that an offeror would be put in the position of "providing unlimited data which, as a threshold matter, may not be relevant to its capacity to give impartial advice or result in an unfair competitive advantage." We believe that the obligation to disclose interests that relate to the work to be performed under the proposed contract is clearer than the previous requirement which arguably was dependent upon whether the offeror considered the otherwise relevant interest to result in bias or an unfair competitive advantage. The analysis of the effect of the interest or interests is the responsibility of the contracting officer, and the proposer is not in the position of drawing an objective conclusion of the effect of an interest. More importantly, the contracting officer may determine the potential for bias or unfair competitive advantage, not from one interest, but from two or more interests, any of which alone would not be considered significant.

The third commenter did not agree with the proposed insertion of "reasonably" on the grounds that the "safe course for a contracting officer to take when faced with this standard is to conclude that virtually all situations may reasonably give rise to an OCI." We have deleted "reasonably," though its inclusion in the proposed rule was intended to help assure that consideration of interests would not be affected by remote relationships.

As will be discussed in more detail later, the standard that the contracting officer is to apply in making the determination as to the presence of an organizational conflict of interest is whether there is "little or no likelihood" of an organizational conflict. That test is taken from the underlying statutes and has formed the basis of the OCI determination since the promulgation of the implementing regulations.

2. Relationship of Interests

Three commenters took exception to the proposed substitution of the standard for contractual requirements that merit particular attention at 909.570–4(a). Previously, this standard was those contractual requirements that "call for the rendering of advice, or consultation or evaluation services, or similar activities *that lay the direct groundwork for* the Department's decisions * * *." The proposed rule substituted "*are expected to play a part in* * * *." (emphasis added)

All three comments were founded upon the same grounds, which are best represented by the comment of one of the three: "As proposed, this revision will cause activities that are only very tangentially related to be considered to create an OCI and will remove any rule of reason in determining when an OCI exists."

We disagree and have included the change. This language is not intended to describe when the contracting officer should determine that an organizational conflict of interest exists. We believe that the commenters have been misled by the change in the heading of 909.570–4, "Criteria for recognizing organizational conflicts of interest." In that particular part of the regulation, the material is intended to aid the contracting officer in determining whether a particular statement of work is subject to organizational conflicts of interest concerns. In other words, this guidance goes to whether the contracting officer would require that the solicitation include the organizational conflicts of interest solicitation provision at 952.209–70 and whether the model and final contracts would contain the clause at 952.209–72.

No comments were received about the other minor changes proposed to be made to 909.570–4(a) and 909.570–4(b)(4) and (b)(7).

No comments were made about the proposed changes to 909.570–5(a). These changes are mirrored in proposed changes to the solicitation provision and will be discussed there.

The rule proposed to create a new paragraph 909.570–5(b) from the content of the second half of paragraph (a). This new paragraph would modify the requirement for the submission of a new or updated disclosure for "all modifications * * * except those issued under the Changes clause" to those "that exercise an option or otherwise meaningfully extend the period of performance or add work of the type noted above to the contract." One commenter objected, apparently not recognizing that the required frequency of new or updated disclosure would be reduced.

In addition, the OCI clause contains a requirement for postaward disclosure. If the contractor has fulfilled that responsibility, this requirement would be little more than a formality.

3. Avoidance and Mitigation

Five commenters disagreed with the proposed changes to 909.570–5(c). We believe they have misinterpreted the proposed changes. The changes consisted of the proposed deletion of the words "or mitigated" from the last portion of the sentence that had previously been 909.570–5(b) and the insertion at 909.570–5(c) of the sentence that states, "[a]n organizational conflict of interest has been avoided when the actions taken to remedy it result in there being little or no likelihood of an organizational conflict of interest."

The comments were based upon the belief that these changes deny the contracting officer the flexibility to mitigate a situation that has been determined to be an organizational conflict of interest. In fact, the applicable statute requires that an organizational conflict of interest, once identified, be avoided or award may not be made in the absence of a determination that award otherwise is in the best interests of the United States. The statute and implementing regulations have provided that "little or no likelihood of an organizational conflict of interest" is the standard or threshold for the decision as to whether a particular fact or facts amount to an organizational conflict of interest. Any greater likelihood amounts to an organizational conflict.

Mitigation, on the other hand, describes the situation in which the actions taken to remedy an organizational conflict of interest taken have not reduced the conflict of interest to the required level of "little or no likelihood." That result is not enough to allow an award, absent the public interest determination described above.

It was the intent of the added sentence to make it clear that the test for avoiding an organizational conflict was the same as the test for determining the existence of the organizational conflict initially, "*little* or no likelihood." In other words, there may be some remote possibility of an organizational conflict of interest, and the contracting officer may determine that an organizational conflict does not exist. If, on the other hand, having determined that an organizational conflict does exist, the contracting officer may determine that the steps taken to remedy the conflict reduce the concern to the level of "*little* or no likelihood," which actions have thereby avoided the organizational conflict of interest.

This change then does not interfere with the exercise of discretion by the contracting officer in avoiding an identified organizational conflict of interest. Rather, it makes clear that the test for determining whether an organizational conflict of interest exists is the same, *i.e*, "little or no likelihood," whether it is applied in the original analysis or after having taken steps to remedy an organizational conflict of interest that was initially determined to exist.

4. Subsequent Bars

With regard to any bar of the successful firm from subsequent competitions, five commenters requested that the sentence of 909.570–6 requiring that "[t]his is a variable; and in no event shall an exclusion be stated which is not related to a specific expiration date or an event certain" be retained. We believe that this sentence is redundant in light of the two preceding sentences, *i.e.*, "[s]uch notice shall specify the proposed extent and duration of any special restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage."

Two of the commenters took exception to the proposed addition to the last sentence. That addition was intended to make clear that the absence of a bar in a previous contract will not prohibit the contracting officer from considering the relationship of the two requirements as a basis for finding an organizational conflict of interest in the award of the second requirement, based upon bias or unfair competitive advantage. We believe this conclusion is statutorily directed. However, until now, the statement has not been made, and DOE contracting personnel may have been misled. We have retained all the changes to 909.570–6.

No comments were received to the proposed changes to 909.570–7.

5. Deletion of "the General Clause"

Two comments were received with regard to 909.570–8. One commenter objected to the proposed deletion of the provision for the general organizational conflicts of interest clause at 952.209–71. The commenter illustrated its position by referring to "standard architect-engineer/construction services, where disclosures are routinely required (both for prime contracts and subcontracts) where there are no

relevant facts which could give rise to an organizational conflict of interest and the contractor warrants that this is the case." We believe that generally a standard A–E contract, that is, a contract for design services, would not be subject to organizational conflicts of interest processing. Certainly, a requirement for technical consulting or management support services or evaluation services or activities involving an A–E firm would be covered, as it would for any entity. Were the requirement subject to OCI processing, the fact that the offeror represented that it had no relevant facts to disclose would have no bearing on which clause to use.

We are deleting the clause formerly at 952.209–71. The clause was an abbreviated version of the special clause. It (1) did not extend to affiliated entities of the contractor, (2) did not contain the bars in paragraphs (b)(1) and (b)(2) of the special clause, and (3) did not contain the prohibition against award of OCI covered subcontracts without the determination by the DOE contracting officer as to the proposed subcontractor's organizational conflicts of interest. We believe these omissions to be meaningful in the administration of the clause, and, the omission was not appropriate for contracts that are subject to organizational conflicts of interest processing.

The second commenter suggests the substitution of the word "duration" for "time period" as it appears in the last sentence of 909.570–8(b)(5) because "duration" may "tie to a completion of an activity rather than a date." We agree and have made the change.

6. "Little or no Likelihood"

Five commenters have proposed changes to 909.570–9. The first suggests that the phrase "or other means" which was proposed to be added to subparagraph (a)(3) also be added to subparagraph (a)(2) for consistency's sake. We have made this change but differently than suggested. The phrase has been added to subparagraph (a)(2), and the phrase "by an appropriate contract clause or other means" has been deleted from subparagraph (a)(3).

The other four commenters object to the proposed statement "[i]f the contracting officer determines that there is more than little or no likelihood of an organizational conflict of interest, then an organizational conflict of interest exists with regard to that particular offeror." The commenters express the view that the term "more than little or no likelihood" should be defined.

First, the previous proposed sentence states that a basic concept of the Department's organizational conflicts of interest system is that an organizational conflict of interest does *not* exist if there is "little or no likelihood" of an organizational conflict of interest in the performance of the contract by the particular offeror being evaluated. That test is taken from sec. 401 of Pub. L. 95–39 (42 U.S.C. 5918(b)). The sentence preceding the sentence in question makes that point clear.

The sentence that has been objected to then states the obverse, *i.e.*, that, therefore, facts that indicate a *larger* likelihood of an organizational conflict than "little or no likelihood" then indicates the existence of an organizational conflict of interest with respect to the performance of the contract by the particular offeror being evaluated. These concepts are, like so many other legal and regulatory concepts, imprecise. The statute does not define the phrase "little or no likelihood," nor do we believe that any attempt by ourselves or others would make it more precise. We believe that facts may exist with respect to the offeror that could indicate a possibility, *i.e.*, "little likelihood," of an organizational conflict and yet the contracting officer not be bound to find one. In other words, the test does not require the absolute absence of possibility.

With this background, the sentence objected to is merely stating the other side of the proposition, which has always been the case. If the contracting officer determines that there is more than a "little likelihood" of an organizational conflict of interest, then one exists for the purpose of the DOE system, with the result that award may not be made unless the risk is reduced to the level of "little likelihood" or "no likelihood" by some manner of mitigation or that the statutorily required determination is made that award is in the public interest and that determination is published in the **Federal Register** in accordance with 909.570–9(a)(3). We believe that no definition of the phrase "more than little or no likelihood" is necessary. It merely describes the situation in which the contracting officer *cannot* reasonably say that there is "little or no likelihood" of an organizational conflict of interest with respect to the statement of work by a particular offeror.

One commenter did not agree with the proposed changes made at 909.570–10, wanting to retain the current language. We believe the proposed changes are more accurate than the current language and will be of greater assistance to contracting officers in the consideration of OCI situations occurring after contract award. We have, therefore, adopted the proposed changes in the final rule.

7. Subcontracts

Two commenters objected to the proposed change at 909.570–12 which deleted the phrase "except that subcontractors shall not normally be required to submit the disclosure or representation if such subcontract is for supplies." The commenters believe that this deletion creates an uncertainty as to the intended meaning and that the deletion might suggest that the organizational conflicts of interest system might, in fact, apply to subcontracts for supplies.

We disagree. The system applies *per se* to those prime contracts and subcontracts that involve the providing of evaluation services or activities or technical consulting and management support services. This point is made clear in the proposed rule at 909.570–12 following the deletion of the phrase noted above by the addition of the phrase "*i.e.*, evaluation services or activities or technical consulting and management support services." A similar clarifying change has been made to paragraph (d)(1) of the clause at 952.909–72.

We believe that the DOE OCI system would apply to prime contracts or subcontracts for supplies only in the rarest instance. We made this change because we believe that the former language of DEAR 909.570–11 presented a greater danger of misapplication of the DOE OCI system to subcontracts for supplies than the revision resulting from this final rule.

8. Solicitation Provision

Five commenters disagreed with the proposed altering of the disclosure requirement in paragraph (a)(1) of the solicitation provision at 952.209–70. The change that appears there would require the disclosure of "all relevant facts * * * relating to the work described in the statement of work of this solicitation." In the proposed rule we deleted the phrase "bearing on whether the offeror has a possible conflict of interest." The commenters were concerned that without the qualifying phrase, the disclosure obligation is less clear and more open-ended.

We disagree. As explained in the preamble to the proposed rule, we believe the test of whether a relevant fact bears "on whether the offeror has a possible conflict of interest" adds a complicating and subjective test on top of a relatively simple identification of whether the offeror has an interest(s) that relates to the work to be performed

under the statement of work. We do not agree that this change results in an open-ended obligation to provide data. In order to identify relevant facts that bear upon a possible conflict of interest, the offeror must first identify relevant facts and then determine whether any of those facts, in its mind, bear upon a possible conflict of interest. This change merely does away with the second step. Relevant facts intuitively are those that relate to the statement of work, *e.g.*, investments involving the technology, licensing agreements involving the technology, client relationships involving work like the work to be performed.

One commenter questioned the requirement for the offeror to provide a copy of the Securities and Exchange Commission's Form 10k, if it is required to file one. DOE's internal OCI procedures have called for contracting officers to acquire a copy of the Form 10k for over ten years. This comes under the statutory language "information otherwise available." It, along with the annual report, or comparable information from privately held corporations, is used to confirm the disclosure or representation of the offeror.

This change assures that the Form 10k will be forthcoming with the proposal, thereby saving time in acquiring the report. It is a report that is publicly available, for its intended purpose is to allow those who choose to avail themselves of it to make informed investment decisions. This is not a report that must be created in any way for submission to DOE. That commenter suggested that the contracting officer acquire the Form 10k from the Securities and Exchange Commission. We disagree. The offeror is in the best position to know whether it has the obligation to file it with the SEC and to provide it, if they have filed it with the SEC.

We are, however, simplifying the requirement such that the offeror need supply only the form and a list of attachments, rather than filing the attachments themselves.

One commenter noted that the exclusion of the clause at 952.209–71 will result in the use in all cases of the clause at 952.209–72, with the latter subjecting "all work to the bar." We agree, but each of the bars is conditional. If the qualifying condition does not occur then no bar is effective, even if the OCI clause is used.

Two commenters questioned the substitution of "meaningfully" for "substantially" in paragraph (g) of the clause at 952.209–72 with regard to the submission of a new or updated disclosure or representation if the period of performance is extended. We have used the current term and have deleted "meaningfully" from the rule. We have, however, added the phrase "an option is to be exercised or the period of performance is otherwise significantly increased." This makes the provision consistent with the regulation at 909.570–5(b).

9. OCI Clause

Five commenters disagreed with the proposed changes to paragraph (c)(1) of the clause at 952.209–72. In that paragraph the post award obligation to disclose was clarified and made consistent with the change that calls for the offeror to disclose relevant facts. The previous language in paragraph (c)(1) required the contractor to disclose conflicts of interest that it discovers after award. Under the current language, in order to discover a conflict of interest, the offeror will have had to identify the interest initially and then judge whether that change presents a conflict of interest.

We believe that the proposed change simplifies this obligation. Only the change in facts, *i.e.*, additional interests, changes in disclosed interests, will need to be identified by the contractor. The contracting officer will then be in a situation to evaluate the implications of the change in relevant facts on continued performance under the contract. To the extent that the contractor fulfills its obligations under this paragraph, the conditions for required disclosure under paragraph (g) will be dramatically reduced.

The essence of the concerns expressed here parallel those discussed earlier with regard to the change to the disclosure requirement, *i.e.*, that the requirement has been made vaguer. We disagree. The obligation to describe relevant interests alone is simpler and requires less judgment by the offeror or contractor than the additional judgment as to which, if any, of those relevant facts, bear upon a possible organizational conflict of interest.

Three commenters then did not agree with the related changes proposed to be made to paragraph (c)(2), which states that a failure to report relevant interests known at the time of disclosure or representation may result in the termination of the contract for default. The current paragraph (c)(2) states that the termination for default may result where an organizational conflict of interest was known but not reported. We believe that the changed language presents the contractor with less risk than the current language. The determination of organizational conflict of interest is inherently more subjective than the mere identification of relevant interests.

The final comment noted that the new title for the clause at 970.5204–36 contained a typographical error with the inclusion of "of" after "University." We have made this correction.

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses will apply only to contracts which are awarded after the effective date of the final rule. and, thus, will have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a

substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule revises certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 909, 952, 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on December 12, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 909.5—Organizational Conflicts of Interest

2. Section 909.500 is amended by adding the following as the second sentence:

§ 909.500 Scope of subpart.

* * * However, the coverage at FAR subpart 9.5 regarding marketing consultants does apply to DOE acquisitions.

3. Section 909.570–3 is amended by revising the definitions for "Evaluation services or activities," "Organizational conflicts of interest," and "Technical consulting and management support services" to read as follows:

§ 909.570–3 Definitions.

* * * * *

Evaluation services or activities means any work or effort involving the independent study of technology, process, product, or policy.

* * * * *

Organizational conflicts of interest means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that relate to the work to be performed under a Department contract and such interest or interests may reasonably (1) diminish an offeror's or contractor's capacity to give impartial, technically sound, objective assistance and advice, or (2) result in an offeror's or contractor's being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

* * * * *

Technical consulting and management support services means any work or effort to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies. Such services typically include assistance in the preparation of program plans; evaluation, monitoring, or review of other contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work; and may involve the contractor's being given access to data confidential to the Department or proprietary to others.

4. Section 909.570–4 is amended by revising the last sentence of paragraph (a) and by revising paragraphs (b)(4) and (b)(7) to read as follows:

909.570–4 Criteria for recognizing organizational conflicts of interest.

(a) * * * While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interest, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that are expected to play a part in the Department's decisions on future acquisitions; research, development, and demonstration programs; production activities; the formulation of departmental policy; and regulatory activities.

(b) * * *

(4) Contract performance involving access to information proprietary to third parties which cannot lawfully be used for purposes other than those authorized by those third parties.

* * * * *

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor would be regulated or is providing, or is currently planning to provide, assistance on the same or similar matter to any organization regulated by the Department.

* * * * *

5. Section 909.570–5 is revised to read as follows:

909.570–5 Disclosure of organizational conflicts of interest.

(a) When submitting solicited and unsolicited proposals for (1) evaluation services or activities; (2) technical consulting and management support services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the

resulting contract, offerors shall be required to identify and disclose information about contracts, investments, and all other interests relating to the work to be performed under the proposed contract or complete the representation in accordance with 909.570–7.

(b) This requirement shall also apply to modifications of contracts of the types noted in paragraph (a) of this section that exercise an option or otherwise meaningfully extend the period of performance or add work, of the type noted in paragraph (a), to the contract. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement need be submitted. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(c) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no award of a contract or contract modification covered by 909.570–7 shall be made until the organizational conflict of interest has been avoided, except as provided in 909.570–9. An organizational conflict of interest has been avoided when corrective actions taken to remedy it result in there being little or no likelihood of an organizational conflict of interest.

6. Section 909.570–6 is revised to read as follows:

909.570–6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570–7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. Another type of organizational conflict of interest may exist in that work to be performed will lead to a subsequent requirement with the result that the successful proposer on the current solicitation will be barred by operation of paragraph (b)(1)(i) of the clause at 952.209–72 from proposing on the later solicitation. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing the offerors (a) that such a potential conflict is foreseen and (b) of any special contract clause or provision designed to avoid or mitigate such conflict that will be included in any resultant contract as required by 909.570–8(a). Such notice shall specify the proposed extent and duration of any special restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly (*i.e.*, arising out of or relating to) from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction. Nevertheless, this absence of restriction shall not preclude the contracting officer from finding that, in light of performance of the prior contract, an organizational conflict of interest would or may exist.

7. Section 909.570–7 is revised to read as follows:

909.570–7 Disclosure or representation.

The contracting officer shall include the provision at 952.209–70, Organizational Conflicts of Interest-Disclosure or Representation, in all solicitations, including those for scope modifications, and offerors shall accordingly disclose or represent in their proposals, including unsolicited proposals for (a) evaluation services or activities; (b) technical consulting and management support services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (d) other contractual situations where special organizational conflicts of interest issues are identified. Section 909.570–15 of this part contains a suggested outline for the disclosure submission.

8. Section 909.570–8 is revised to read as follows:

909.570–8 Contract clauses.

(a) *Special contract clause.* The contracting officer shall include the clause at 952.209–72, Organizational Conflicts of Interest, in all contracts for evaluation services or activities or technical consulting and management support services.

(b) *Specially drafted contract clauses and provisions.* If it is determined from the nature of the proposed contract that a specifically identified, potential organizational conflict of interest may exist, the contracting officer may determine that such conflict can be avoided through the use of an appropriate specially drafted additional contract clause. Examples of the types of clauses which may be employed include, but are not limited to, the following:

(1) Hardware exclusion clauses which prohibit the contractor's acceptance of production contracts following a related design contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and/or certain of its key personnel) to avoid conduct deemed to cause an organizational conflict of interest;

(4) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(5) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work. If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and duration of any restrictions.

9. Section 909.570–9 is amended by revising the introductory text of paragraph (a) to read as follows and adding the phrase "or other means" after "by an appropriate contract clause" in the first sentence of paragraph (a)(3):

909.570–9 Evaluations, findings, and contract award.

(a) The contracting officer shall evaluate all relevant facts submitted by an offeror pursuant to the requirement of 909.570–6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation of all such information in accordance with the criteria of 909.570–4, and prior to any award, the contracting officer shall make a finding as to whether a possible organizational conflict of interest may exist with respect to a particular offeror. If the contracting officer determines, in light of all relevant facts, that, with respect to a particular offeror, there is little or no likelihood of an organizational conflict of interest, then no organizational conflict of interest exists for purposes of making the contract award. Conversely, if the contracting officer determines, however, that there is more than little or no likelihood of an organizational conflict of interest, then an organizational conflict of interest exists with regard to that particular offeror. When formal

Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

* * * * *

10. Section 909.570–10 is revised to read as follows:

909.570–10 Action in lieu of termination.

If, after award, changes in relevant facts with respect to the awardee, whether based upon information supplied by the awardee or gathered from other sources, cause the contracting officer to conclude that a organizational conflict of interest exists and that it would not be in the best interest of the Government to terminate the contract as provided in the clause at 952.209–72(e), the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

11. Section 909.570–12 is revised to read as follows:

909.570–12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570–7 from subcontractors and consultants whose subcontract calls for the performance of services similar to those provided by the prime contractor, *i.e.*, evaluation services or activities or technical consulting and management support services. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer, and their disclosure or representation shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contract clause at 952.209–72, entitled Organizational Conflicts of Interest, requires that the contractor (and each succeeding lower tier subcontractor) include that clause in subcontracts or consultant agreements involving work covered by this subpart.

12. Section 909.570–14 is amended by revising paragraphs (b)(4), (b)(5), (b)(7), (b)(8), and (b)(12); by adding the word "not" after "these companies may" in the last sentence of paragraph (b)(6); by replacing "suggests" with "produces" and by replacing "in requests" with "in a request" in the second sentence of paragraph (b)(9); and by adding a comma after "OCI" and removing the word "plants" in the fourth sentence of paragraph (b)(11). These amendments are set forth to read as follows:

909.570–14 Examples.

* * * * *

(b) * * *

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI. The contract should have contained the OCI clause barring Company A from competing for supply of a refrigerator based upon the specification it prepared.

(5) Company A designs or develops new electronics equipment under a DOE contract and delivers descriptive specifications as part of the final report. DOE then issues a solicitation for procurement of that electronics equipment including a statement of work that reflects the descriptive specifications. *Guidance.* Normally this would not constitute an OCI. The contract should have contained the OCI clause barring the company from competing to supply the electronics equipment.

* * * * *

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. *Guidance.* This situation will turn on whether the software that was developed might have limited the potential source for the equipment. If the answer were yes, the contract should have contained the OCI clause barring competition for the equipment. However, if the software were not so limited, this would not constitute an OCI, and Company A would not be barred from at least the initial ADP hardware acquisition necessary to accommodate the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will use in the purchase of rocket fuels. The company has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop the fuels. *Guidance.* Normally this would constitute an OCI, and Company A shall not be permitted to bid on the acquisition to develop the fuels.

* * * * *

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this same solicitation. *Guidance.* Normally this would constitute a conflict, and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (*e.g.*, when the competitive field is limited) to allow a separate division or affiliate of Firm A to submit a proposal. In such a case, of course, Firm A must obtain a waiver from the Department of Energy contracting officer and would not be permitted to participate in the evaluation of this proposal. Such evaluation would be performed by DOE or another DOE contractor.

909.570–15 [Amended]

13. Section 909.570–15 is amended by adding the phrase "interests and" after "currently planned" the second time that phrase appears in paragraph (a).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

15. Section 952.209–70 is revised to read as follows:

952.209–70 Organizational conflicts of interest—disclosure or representation.

Contracting officers shall insert the following provision in solicitations in accordance with 909.570–7.

Organizational Conflicts of Interest—Disclosure or Representation (Dec. 1994)

(a) It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased due to any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(1) As required by section 401 of Pub. L. 95–39 (42 U.S.C. 5918(a)) and section 10 of Pub. L. 95–70 (15 U.S.C. 789(a)), the offeror shall provide a statement which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work described in the statement of work of this solicitation. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of affiliates or other divisions or sections of the proposing entity and how that structure or system would avoid or mitigate an organizational conflict of interest.

(2) The proposing entity shall assure that any consultants and subcontractors,

identified in its proposal, which will perform services similar to those to be performed by the proposer, *i.e.*, evaluation services or activities or technical consulting and management support services submit the same information as required by paragraph (a)(1) of this clause, either as part of the proposing entity's proposal, or directly to DOE prior to the time and date set for receipt of proposals, with identification of the solicitation and the offeror's proposal to which it relates.

(3) The proposing entity shall also assure that each of its chief officers or directors, if any, who will be directly involved in the actual performance of the contract, submit such information.

(4) The proposing entity shall promptly provide to the DOE contracting officer information concerning any changes, including additions, in its relevant facts reported under paragraph (a)(1) of this clause, that occur between the submission of its proposal and the award of the contract or the time that the proposer is notified that it is no longer under consideration for award.

(b) In the absence of any relevant interests referred to above, the offeror or others specified above, shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to the work to be performed.

(c) If the proposing entity has submitted a Securities and Exchange Commission Form 10k to that agency, it shall include a copy of the form and a list of all attachments as part of its business management proposal (or cost proposal if no business management proposal is required).

(d) The contracting officer will review the statement submitted and may require the submission of additional relevant information. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest with respect to the offeror's (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. If such a conflict is found to exist, the Department, at its sole discretion, may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror in face of an organizational conflict after including appropriate conditions mitigating such conflict.

(e) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(f) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(g) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality, and the offeror shall be required to promptly correct the omission.

952.209–71 [Removed and reserved]

16. Section 952.209–71 is removed and reserved.

17. Section 952.209–72 is amended by revising the section heading to read as set forth below; by revising the prescription for use of the clause as set forth below; by revising the title of the clause as set forth below; by amending the subparagraph designators of paragraph (b)(2)(i) of the clause to read "(A)," "(B)," "(C)," and "(D)," respectively; by revising paragraphs (b)(2)(iii), (c), and (d)(1) of the clause to read as follows; and paragraph (g) is amended by replacing the word "significantly" with "meaningfully" and by adding the phrase "in accordance with the instructions of the contracting officer" at the end of the paragraph:

952.209–72 Organizational conflicts of interest.

The contracting officer shall include the following clause in all contracts for evaluation services or activities, technical consulting and management support services, research and development under the authority of the Federal Energy Administration Act, and other appropriate situations in accordance with 909.570–8.

Organizational Conflicts of Interest (Dec. 1994)

* * * * *

(b) * * *

(2) * * *

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the relevant facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts relevant to the performance of this contract and did not disclose such facts to the contracting officer, DOE may terminate this contract for default.

(d) Subcontracts. (1) The contractor shall include this clause, including this paragraph, in contracts of any tier which involve performance of evaluation services or activities, or technical consulting and management support services as those terms are defined at 48 CFR (DEAR) 909.570–3. The terms 'contract,' 'contractor,' and 'contracting officer' shall be appropriately modified to preserve the Government's rights.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

18. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

970.5204–36 [Amended]

19. Section 970.5204–36, Organizational conflicts of interest, is amended by revising the section heading to read "Preventing conflicts of interest in university research" and by revising the title of the clause contained therein to read "Preventing Conflicts of Interest in University Research (DEC 1994)."

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BILLING CODE 6450–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870

RIN 2700–AB38

NASA FAR Supplement Directive (NFSD) 89–17; Miscellaneous amendments

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as increase of the threshold in the Master Buy Plan, removal of internal reporting requirements, revision of office codes, and division title changes.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482; e-mail: dbeck@proc.hq.nasa.gov.

SUPPLEMENTARY INFORMATION

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Adoption of Interim Rule as Final Rule

NASA is adopting as final rules the text set out as interim rules at 59 FR 38130, July 27, 1994, SBA Appeals (no comments received) and 58 FR 69245, December 30, 1993, Synopsis of Actions Outside the U.S. (no comments received). No changes are made to these interim rules.

Impact

NASA certifies that this regulation 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.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870 are amended as follows,

1. The authority citation for 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870 continues to read as follows:

42 U.S.C. 2473(c)(1)

2. Under the authority of 42 U.S.C. 2473(c)(1), the interim rules published at 59 FR 38130, July 27, 1994, and at 58 FR 69245, December 30, 1993, are adopted as final without change.

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.104–370 [Amended]

3. In section 1801.104–370, paragraph (a), "Grant and Cooperative Agreement Handbook (G&CAHB)" is revised to read "NASA Research Grant Handbook," and "Mrs. Cynthia O'Bryant" is revised to read "Ms. Joan Brooks."

1801.270 [Amended]

4. In section 1801.270, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1801.271 [Amended]

5. In section 1801.271, paragraph (a)(1) "Procurement Policy Division (Code HP)" is revised to read "Acquisition Liaison Division (Code HP)" and paragraph (a)(2) is revised to read as follows:

1801.271 NASA procedures for FAR and NFS changes.

(a) * * *

(2) The Acquisition Liaison Division (Code HP) is responsible for the receipt and formal processing of changes to the NFS. A Code H procurement analyst—a subject matter specialist—is assigned to and responsible for ensuring all necessary actions are taken. It is advisable to contact the appropriate Code H analyst (see the Procurement Information Circular entitled "Headquarters Points of Contact for Policy and Operational Information") to determine if a similar regulatory change is already underway or contact Code HP for further advice as to the simplest means of preparing a formal request.

* * * * *

1801.272–1 [Amended]

6. In section 1801.272–1, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1801.603–2 [Amended]

7. Section 1801.603–2(d)(3) is revised to read as follows:

1801.603–2 Selection.

* * * * *

(d)(1) * * *

(2) * * *

(3) If the appointing authority approves the Request for Appointment of a Contracting Officer, the appointing authority shall issue a Standard Form (SF) 1402, Certificate of Appointment, in accordance with 1801.603–3. A copy of the SF 1402, the Request for Appointment of a Contracting Officer, and the qualification statement shall be maintained for each contracting officer in a central location in the installation's contracting office while the SF 1402 is effective and for three years after its termination or after the individual has left the contracting office's employ. Each installation shall maintain an up-to-date listing, by name and position, of all the installation's contracting officers and the limitations imposed on them in their warrants.

* * * * *

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.104–11 [Amended]

8. In section 1803.104–11, paragraph (b), "Code HM" is revised to read "Code HP."

1803.804 [Amended]

9. In paragraph (a) of section 1803.804, the phrase "The Headquarters Procurement Systems Division (Code HM)" is revised to read "The Headquarters Contract Management Division (Code HK)," and in paragraph (b), "Code HM" is revised to read "Code HK."

PART 1804—ADMINISTRATIVE MATTERS

1804.601 [Amended]

10. In section 1804.601, "The Headquarters Procurement Systems Division (Code HM)" is revised to read "The Headquarters Analysis Division (Code HC)."

1804.602 [Amended]

11. In section 1804.602, "(Code HM)" is revised to read "(Code HC)."

1804.671–4 [Amended]

12. In section 1804.671–4, paragraph (k), "Headquarters Procurement Systems Division (Code HM)" is revised to read "Headquarters Analysis Division (Code HC)," and "NASA Headquarters (Code HM)" is revised to read "NASA Headquarters (Code HC)."

13. In section 1804.671–4, paragraph (zz)(3), "Procurement Management Division (Code HM)" is revised to read "Analysis Division (Code HC)."

1804.7101 [Amended]

14. In paragraph (a) of section 1804.7101, "(Code HM)" is revised to read "(Code HC)."

PART 1806—COMPETITION REQUIREMENTS

1806.303–270 [Amended]

15. In section 1806.303–270, the references "NFS 1803.602, 1803.7001(a), and 1806.304–70" are revised to read "NFS 1803.602 and 1803.7001(a)."

PART 1807—ACQUISITION PLANNING

1807.7102 and 1807.7103–1 [Amended]

16. Sections 1807.7102 and 1807.7103–1 are revised to read as follows:

1807.7102 Applicability.

(a) The Master Buy Plan Procedure applies to each negotiated procurement where dollar value, including the aggregate amount of follow-on procurements, is expected to equal or exceed $50,000,000.

(b) For the purpose of the initial Master Buy Plan submission only, each installation shall submit all procurements over $50,000,000. Each installation shall submit their three largest procurements, so that installations having less than three procurements over $50,000,000 shall submit, as their initial annual Master Buy Plan submission, their three largest procurements regardless of dollar value.

(c) The procedure also applies to:

(1) Any phased procurement whose overall value exceeds $50,000,000, even if the value of the initial phase is below the threshold. (Initial phase for all procurements is considered to be Phase B or its equivalent.)

(2) Any supplemental agreement (except one providing only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if either the new work or an individual change order or the aggregate of two or more actions equals or exceeds $50,000,000.

(3) Any supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, even though the monetary amount under consideration might not equal or exceed $50,000,000.

(d) In order to conduct the reviews required by (FAR) 48 CFR 8.307–1(b) for separate contracts, this procedure applies also to procurement of utility services when an areawide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $150,000; or

(2) Except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $75,000.

(e) The Master Buy Plan Procedure does not apply to termination settlement agreements (see (FAR) 48 CFR Part 49).

* * * * *

1807.7103–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Associate Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing in it every known procurement that (1) meets the criteria in 1807.7102, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list those procurements selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans that have not been completed. These procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7106 and shall identify the individual procurement documents involved for every procurement listed. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

1807.7204 [Amended]

17. In paragraph (b) of section 1807.7204, "Code HM" is revised to read "Code HC."

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Part 1808 is amended as set forth below:

1808.405 [Amended]

18. The section heading "1808.405–1 Ordering from multiple-award schedules." is removed, and paragraphs (a) and (b) are redesignated as section 1808.405.

19. In the newly designated paragraph (a) to section 1808.405, the last sentence is removed.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.302 [Amended]

20. In paragraph (a) to section 1812.302, "Headquarters Procurement Policy Division" is revised to read "Headquarters Acquisition Liaison Division."

1812.303–70 [Amended]

21. In paragraph (e) to section 1812.303–70, "The Headquarters Procurement Policy Division" is revised to read "The Headquarters Acquisition Liaison Division."

PART 1815—CONTRACTING BY NEGOTIATION

1815.804–3 [Amended]

22. In section 1815.804–3, paragraphs (a)(4) and (d), "Contract Pricing and Finance Division" is revised to read "Analysis Division."

23. Section 1815.804–3, paragraph (d), in the introductory text to the Determination and Finding, the reference "1815.804–3(c)" is revised to read "1815–804–3(d)."

1815.805–5 [Amended]

24. In paragraph (e) of section 1815.805–5, the word "a" is added between the words "of" and "follow-on" and the reference "1815.505–5" is revised to read "1815.805–5."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.708–70 [Amended]

25. In section 1819.708–70, paragraph (b), "(Code HM)" is revised to read "(Code HC)."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.406–13 [Amended]

26. In 1822.406–13, "The Procurement Policy Division" is revised to read "The Acquisition Liaison Division."

1822.807 [Amended]

27. In section 1822.807, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1825—FOREIGN ACQUISITION

1825.7200 [Amended]

28. In section 1825.7200, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1829—TAXES

1829.203 [Amended]

29. In paragraph (a) to section 1829.203, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.103 [Amended]

30. In section 1833.103, paragraph (a) is revised to read as follows:

1833. 103 Protests to the agency.

(a) When a protest is filed directly with an installation, any determination under (FAR) 48 CFR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Associate Administrator for Procurement.

* * * * *

31. In paragraph (c) of 1833.103, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.016–70 [Amended]

32. In section 1835.016–70, paragraph (b)(6) is removed.

1837.202–71 [Amended]

33. In paragraph (b) of section 1837.202–71, "(Code HM)" is revised to read "(Code HC)."

PART 1842—CONTRACT ADMINISTRATION

1842.101 [Amended]

34. In section 1842.101, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1842.1004 [Amended]

35. In section 1842.1004, "Contract Pricing and Financing Division" is revised to read "Analysis Division."

1842.1203 [Amended]

36. In paragraph (a) introductory text of section 1842.1203, "Director, Procurement Systems Division (Code HM)" is revised to read "Director, Analysis Division (Code HC)."

37. In paragraph (c)(1) of section 1842.1203, "Code HM" is revised to read "Code HC."

1842.1203–70 [Amended]

38. In section 1842.1203–70, paragraph (c), "Code HM" is revised to read "Code HC."

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.305 [Amended]

39. In section 1844.305, "Code HM" is revised to read "Code HK."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

40. Section 1852.103–70 is amended by revising the example to read as follows:

1852.103–70 Identification of modified provisions and clauses.

* * * * *

52.232–28 Electronic Funds Transfer Payment Methods (APR 1989)—as modified by 48 CFR 1832.908(a) (NASA FAR Supplement 1832.908(a))

1852.204–70 [Amended]

41. In the clause of section 1852.204–70, paragraphs (a) introductory text, (b) and (e)(2), "(Code HM)" is revised to read "(Code HC)."

PART 1853–FORMS

1853.103 [Amended]

42. In section 1853.103, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1853.108 [Amended]

43. In section 1853.108, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.103 [Amended]

44. In section 1870.103, App. I, Chapter 7, Appendix B, paragraph XI, subparagraph 2., the phrase "and the clause at NFS 1852.227–73, 'Patent Rights Clause for Subcontracts,' " is removed.

45. In section 1870.303, App. I, Chapter 1, paragraph 101, subparagraphs 4.i. and 4.j. are revised to read as follows:

1870.303 Source Evaluation Board Procedures.

* * * * *

4. i. Establish an SEB advisory group or individual at the field installation to ensure proper source selection procedures are employed;

j. Ensure an environment exists in which evaluation and selection activities can be effectively conducted; and

* * * * *

[FR Doc. 94–31512 Filed 12–22–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 646

[Docket No. 940953–4347; I.D. 081594A]

RIN 0648–AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule changes the minimum size limits of certain species, requires charter vessels/headboats and dealers to obtain Federal permits, clarifies one of the earned income requirements for a vessel permit, restricts the sale/purchase of snapper-grouper species, modifies the criteria for determining when a vessel is operating as a headboat, modifies the requirements for possessing multi-day bag limits, specifies allowable gear, authorizes permits for experimental fishing, modifies the management unit for scup, clarifies the management unit for sea bass, and corrects and clarifies the regulations. The intended effects of this rule are to conserve snapper-grouper species and enhance effective management of the snapper-grouper fishery. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of three new collection-of-information requirements contained in this rule.

EFFECTIVE DATE: January 23, 1995, except that §§ 646.4 (d) and (e), (f) and (g), and 646.7(e) are effective December 23, 1994; and §§ 646.4 (a)(3) and (a)(4), 646.7 (c), (d), and (mm), and 646.26(a) are effective March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic States are managed under the

FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The background and rationale for the measures in Amendment 7 and the additional measures proposed by NMFS were contained in the preamble to the proposed rule (59 FR 47833, September 19, 1994) and are not repeated here.

Comments and Responses

Comments on the proposed rule were received from a commercial dive fisherman, the U.S. Fish and Wildlife Service, the Council, and the operator of a charter vessel.

Comment: The U.S. Fish and Wildlife Service supported the proposed management measures in Amendment 7.

Response: NMFS agrees.

Comment: The Council reiterated its desire for the prohibition on use of powerheads in the EEZ off South Carolina and for the prohibition on bottom longlines south of St. Lucie Inlet. This was done by copying appropriate sections of Amendment 7 and resubmitting them.

Response: NMFS agrees.

Comment: The charter vessel operator commented that it is unfair to allow an excursion vessel to possess a 3-day bag limit of snappers and groupers when charter vessels are restricted to a 2-day bag limit.

Response: This management measure was contained in Amendment 4, not Amendment 7, and therefore is outside the scope of this rulemaking. The commenter's letter has been forwarded to the Council for consideration.

Comment: The commercial diver opposed the prohibition on use of powerheads in the EEZ off South Carolina. He commented that the South Carolina law banning the use of powerheads in State waters is unconstitutional because it limits interstate commerce and would not allow a fisherman to ship powerheaded fish through South Carolina. The commenter asked why enforcement of powerheading restrictions is a major problem with only 17 vessels using dive gear in that State. He asked why the Council has not prohibited sea bass trappings, because hundreds of vessels are engaged in that activity, which is also banned in special management zones (SMZs). He stated that if enforcement of the law on SMZs warrants prohibition of powerheads, it should warrant the prohibition of sea bass traps. He reported that South Carolina would like to make the entire EEZ off its border an SMZ, which would be unacceptable. He concluded by stating that no provisions have been made for transit of the EEZ off South Carolina with fish taken legally in other waters and that he would be unable to fish in Georgia and travel to North Carolina.

Response: After reviewing the administrative record supporting the powerhead prohibition measure, NMFS believes that this measure is necessary to avoid serious user group conflicts in Federal waters off South Carolina. Additionally, the Council believes that South Carolina will be unable to enforce its prohibition on the use of powerheads and the prohibition on the use of powerheads in the SMZs off South Carolina unless powerheads are banned throughout the entire EEZ off South Carolina. This measure will result in consistent Federal and State regulations in the EEZ off South Carolina, which should enhance compliance with management measures. Also, fishermen may continue to use traditional spearfishing gear without powerheads. Fishermen will still be able to use powerheads for safety purposes. Although it is true that fishermen will not be able to transit the EEZ off South Carolina with mutiliated fish and a powerhead, there are no impediments to shipping fish through the State of South Carolina. Fishermen that catch fish with powerheads in the EEZ outside of South Carolina must land them in a state where the practice is legal. Since there is relatively little powerheading activity off South Carolina, few fishermen will be affected by this aspect of the measure. The Council believes that there is an increasing problem of competition between recreational and commercial fishermen using dive gear. This measure will reduce the possibility of conflict between these user groups. Sea bass potting has been a traditional fishing practice off South Carolina. The Council and NMFS do not believe that it is a law enforcement problem. Thus, it is not necessary to prohibit the use of sea bass pots in the EEZ.

Changes From the Proposed Rule

This final rule clarifies that management of bank, rock, and black sea bass under the FMP and the regulations in part 646 applies only south of Cape Hatteras, North Carolina. This geographical limitation on the management of sea bass is contained in the FMP and is based on the fact that Cape Hatteras is the boundary between two distinct stocks of sea bass. The limitation as to black sea bass was discussed in the preamble to the proposed rule to implement the FMP (48 FR 26843, June 10, 1983) and is reflected in the regulations by limitation of the minimum size limit to "black sea bass south of Cape Hatteras, North Carolina * * *" (50 CFR 646.21(a)(1)(i)). As with scup, this geographical limitation of the management unit allows the Mid-Atlantic Fishery Management Council to manage the northern stock of sea bass throughout its range.

In lieu of amending the prohibitions in § 646.7 via complex instructions involving redesignation of current paragraphs, this final rule publishes the entire section, even though a majority of the paragraphs are not substantively changed.

The table in 50 CFR part 204 containing OMB control numbers for NOAA collection-of-information requirements is amended by adding the collection-of-information control numbers issued by the Office of Management and Budget (OMB), under provisions of the Paperwork Reduction Act (PRA), for the new collections contained in this rule.

Effective Dates

This final rule requires the owners/operators of charter vessels/headboats and dealers to obtain permits for the snapper-grouper fishery. In order to allow sufficient time for them to obtain and submit applications for permits and for NMFS to process such applications and issue permits, the measures and prohibitions regarding activities that may be conducted only with such permits, §§ 646.4 (a)(3) and (a)(4), 646.7 (c), (d), and (mm), and 646.26(a), do not become effective until March 1, 1995.

In order for permits to be issued by March 1, 1995, it is essential that the application and permitting process begin as soon as possible. To accomplish this, §§ 646.4 (d), (e), (f), and (g), which set forth procedures for making applications for such permits including the specification of what information is required and other related permit process matters, and § 646.7(e), which prohibits falsification of any information on a permit application, are effective December 23, 1994. To the extent that any of these provisions are substantive rather than procedural, the Assistant Administrator for Fisheries, NOAA, finds that, because a delay in the effectiveness of these provisions would not be in the public interest, good cause exists under section 553(d)(3) of the Administrative Procedure Act not to delay their effective date.

All other measures and related prohibitions are effective January 23, 1995.

Classification

The Regional Director determined that Amendment 7 is necessary for the conservation and management of the snapper-grouper fishery off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the proposed rule was published that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (59 FR 47833, September 19, 1994). As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the PRA—namely, applications for charter vessel/headboat permits, applications for dealer permits, and applications for experimental fishing permits. These collections of information have been approved by OMB under OMB control number 0648–0205. The public reporting burdens for these collections of information are estimated to average 20 minutes, 5 minutes, and 1 hour per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 646 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the first column "§ 646.29" and adding in the corresponding position in the second column "–0205".

PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

1. The title of part 646 is revised to read as set out above.

2. The authority citation for part 646 continues to read as follows:

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

3. Section 646.1 is revised to read as follows:

§ 646.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the EEZ off the southern Atlantic states, except that—

(1) Sections 646.5 and 646.24 also apply to such fish in or from adjoining state waters; and

(2) This part does not apply to bank, rock, or black sea bass or scup north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

(c) "EEZ" in this part refers to the EEZ off the southern Atlantic states, unless the context clearly indicates otherwise.

4. In § 646.2, the definition of "South Atlantic" is removed; the definitions of "Charter vessel", "Headboat", and "Regional Director" are revised; and new definitions of "Off North Carolina", "Off South Carolina", and "Off the southern Atlantic states" are added, in alphabetical order, to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection.

Off North Carolina means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters off the east coast from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off the southern Atlantic states means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

5. In § 646.4, paragraphs (e) through (m) are redesignated as paragraphs (f) through (n), respectively; paragraphs (a)(3), (b)(2)(vii)(B), (b)(2)(vii)(C), (d), the first sentences of newly designated paragraphs (f), (g)(1), (i)(1), and (i)(2), newly designated paragraph (j), and the first sentence of newly redesignated paragraph (n) are revised; and new paragraphs (a)(4), (a)(5), and (e) are added to read as follows:

§ 646.4 Permits and fees.

(a) * * *

(3) *Annual charter vessel/headboat permits for snapper-grouper.* A vessel that is operating as a charter vessel or headboat that fishes for fish in the snapper-grouper fishery in the EEZ, or possesses fish in the snapper-grouper fishery in or from the EEZ, must have on board a charter vessel/headboat permit for the snapper-grouper fishery.

(4) *Annual dealer permits for snapper-grouper, excluding wreckfish.* A dealer who receives fish in the snapper-grouper fishery, excluding wreckfish, that were harvested in the EEZ must obtain an annual dealer permit for snapper-grouper, excluding wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(5) *Annual dealer permits for wreckfish.* A dealer who receives a wreckfish must obtain an annual dealer permit for wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(b) * * *

(2) * * *

(vii) * * *

(B) Gross sales of fish harvested by his or her vessels were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish harvested by the corporation's or partnership's vessels were more than $20,000;

* * * * *

(d) *Application for a charter vessel/headboat permit for snapper-grouper.* (1) An application for a charter vessel/headboat permit for fish in the snapper-grouper fishery must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address, including zip code, and telephone number of the owner of the vessel.

(iv) Name, mailing address, including zip code, and telephone number of the applicant, if other than the owner.

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation/partnership, the employer identification number, if one has been assigned by the Internal Revenue Service, and the date the corporation/partnership was formed).

(vi) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director and included on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(e) *Application for an annual dealer permit.* (1) An application for a dealer permit for snapper-grouper, excluding wreckfish, or for a dealer permit for wreckfish must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; telephone number; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(f) * * * A fee is charged for each permit application submitted pursuant to this section and for each sea bass pot identification tag required under § 646.6(d). * * *

(g) * * *

(1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. * * *

* * * * *

(i) * * * (1) A vessel permit issued pursuant to this section is not transferable or assignable. * * *

(2) A dealer permit issued pursuant to this section may be transferred upon sale of the dealer's business. * * *

(j) *Display.* A vessel permit issued pursuant to this section must be carried on board the vessel and such vessel must be identified as provided for in § 646.6. A dealer permit issued pursuant to this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon request of an authorized officer.

* * * * *

(n) * * * The owner or operator of a vessel with a permit for snapper-grouper, excluding wreckfish; the wreckfish shareholder of a vessel with a permit for wreckfish; the owner or operator of a vessel with a charter vessel/headboat permit for snapper-grouper; or a dealer with a permit issued pursuant to this section must notify the Regional Director within 15 days after any change in the application information required by paragraph (b), (c), (d), or (e) of this section. * * *

§ 646.5 [Amended]

6. In § 646.5, in paragraphs (b) and (c)(1), the phrase "off the South Atlantic states" is removed.

7. Section 646.7 is revised to read as follows:

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in a directed fishery for tilefish in the EEZ or use a sea bass pot in the EEZ north of Cape Canaveral, Florida, aboard a vessel that does not have a vessel permit for snapper-grouper, excluding wreckfish, as specified in § 646.4(a)(1).

(b) Fish for wreckfish in the EEZ, possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ aboard a vessel that does not have a vessel permit for wreckfish, as specified in § 646.4(a)(2).

(c) Own or operate a vessel that operates as a charter vessel or headboat that fishes for snapper-grouper species in the EEZ, or possesses snapper-grouper species in or from the EEZ, without a charter vessel/headboat permit on board, as specified in § 646.4(a)(3).

(d) As a dealer, receive fish in the snapper-grouper fishery without a dealer permit, as specified in § 646.4(a)(4) or (5).

(e) Falsify information specified in § 646.4 (b)(2), (c)(2), (d)(2), or (e)(2) on an application for a permit.

(f) Fail to display a permit, as specified in § 646.4(j).

(g) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d), or as may be required by § 646.29.

(h) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(i) Fail to make available records of off-loadings, purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2); or fail to make available individual transferable quota (ITQ) coupons, as specified in § 646.10(c)(8).

(j) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).

(k) Possess an ITQ coupon not issued to him or, if received by transfer, without all required sale endorsements properly completed thereon, as specified in § 646.10(c)(3).

(l) Possess wreckfish on board a fishing vessel in an amount exceeding the total of the ITQ coupons on board the vessel, or without a vessel permit, or without a logbook form for recording the fishing trip, as specified in § 646.10(c)(4).

(m) Fail to sign and date the "Fisherman" part of ITQ coupons or fail to submit such coupon parts with the record of the fishing trip, as specified in § 646.10(c)(5).

(n) Fail to give a dealer the "Fish House" part of ITQ coupons, or transfer a wreckfish to a dealer who does not hold a permit, as specified in § 646.10(c)(6).

(o) Receive a wreckfish from a vessel that does not have a vessel permit for wreckfish, as specified in § 646.10(c)(7).

(p) Fail to receive the "Fish House" part of ITQ coupons from a fisherman; fail to enter the permit number of the vessel from which the wreckfish were received, the date of receipt, and the dealer's permit number on such parts; fail to sign such parts; or fail to submit such parts with the dealer report; as specified in § 646.10(c)(7).

(q) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(r) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(s) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(t) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 646.21(c) and 646.23(e).

(u) Transfer wreckfish at sea, as specified in § 646.21(d)(1).

(v) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(3) and (4).

(w) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(x) During the wreckfish spawning season closure, harvest, possess, off-load, sell, purchase, trade, or barter wreckfish in or from the EEZ, or attempt any of the foregoing, as specified in § 646.21(g).

(y) During the greater amberjack and mutton snapper spawning seasons, exceed the possession limits for those species, as specified in § 646.21 (h) and (i).

(z) Possess a warsaw grouper or speckled hind in excess of the vessel trip limit, as specified in § 646.21(j) (1) or (2).

(aa) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, a warsaw grouper or speckled hind, as specified in § 646.21(j)(3).

(bb) [Reserved]

(cc) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(dd) Use a fish trap in the EEZ, or use a sea bass pot in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22(b) and (c)(1).

(ee) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass pot that does not conform to the requirements for openings and degradable fasteners specified in § 646.22(c)(2)(i).

(ff) Use or possess in the EEZ north of Cape Canaveral, Florida, sea bass pots in a multiple configuration, as specified in § 646.22(c)(2)(ii).

(gg) Pull or tend another person's sea bass pot, except as specified in § 646.22(c)(2)(iii).

(hh) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board; as specified in § 646.22(d)(1)(i).

(ii) Aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d)(1)(ii).

(jj) Fish for wreckfish with a bottom longline, or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(d)(2).

(kk) In the EEZ off South Carolina, harvest fish in the snapper-grouper fishery with a powerhead, as specified in § 646.22(e).

(ll) Harvest fish in the snapper-grouper fishery with spearfishing gear while using a rebreather, as specified in § 646.22(f).

(mm) Use unauthorized gear in a directed fishery for snapper-grouper or exceed the possession limits for snapper-grouper species when unauthorized gear is aboard, as specified in § 646.22(g)(2)(i) and (ii).

(nn) Transfer at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(g)(2)(iii) and (iv).

(oo) Exceed the bag and possession limits, as specified in § 646.23(a) through (c).

(pp) Transfer at sea—

(i) Warsaw grouper or speckled hind, as specified in § 646.21(j)(6);

(ii) Fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f); or

(iii) Snowy grouper or golden tilefish, as specified in § 646.25(e).

(qq) Exceed a commercial trip limit for snowy grouper or golden tilefish, as specified in § 646.25(a) or (b).

(rr) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, snowy grouper or golden tilefish in excess of an applicable trip limit, as specified in § 646.25(f).

(ss) Sell, trade, or barter or attempt to sell, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ to a dealer who does not have a permit, as specified in § 646.26(a).

(tt) Purchase, trade, or barter or attempt to purchase, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ unless the harvesting vessel has a permit for snapper-grouper, excluding wreckfish, or the seller has a commercial license to sell fish, as specified in § 646.26(b).

(uu) Except for snapper-grouper species harvested by a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snapper-

grouper species, excluding wreckfish, harvested in the EEZ in excess of the bag limits, as specified in § 646.26(c).

(vv) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.27(b) and (c).

(ww) Fish for fish in the snapper-grouper fishery in the Oculina Bank habitat area of particular concern (HAPC), retain such fish in or from the Oculina Bank HAPC, or fail to release immediately such fish taken in the Oculina Bank HAPC by hook-and-line gear, as specified in § 646.27(d)(2).

(xx) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a fish in the snapper-grouper fishery.

(yy) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

8. In § 646.21, paragraphs (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) are redesignated as paragraphs (a)(1)(v), (a)(1)(vii), and (a)(1)(viii), respectively; paragraphs (a)(1)(i) and (a)(1)(iii) are revised; and new paragraphs (a)(1)(iv) and (a)(1)(vi) are added to read as follows:

§ 646.21 Harvest limitations.

(a) * * *

(1) * * *

(i) Black sea bass—8 inches (20.3 cm), total length.

* * * * *

(iii) Blackfin, cubera, dog, gray, mahogany, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 cm), total length.

(iv) Hogfish—12 inches (30.5 cm), fork length.

* * * * *

(vi) Mutton snapper—16 inches (40.6 cm), total length.

* * * * *

9. In § 646.22, paragraphs (d), (e), and (f) are removed; paragraph (g) is redesignated as paragraph (d); in newly designated paragraph (d)(1)(iii), the reference to "paragraph (g)(1)" is revised to read "paragraph (d)(1)(ii)"; newly designated paragraphs (d)(1)(i) and (d)(1)(ii) introductory text are revised; and new paragraphs (e), (f), (g), and (h) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(d) * * *

(1) * * *

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) South of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL);

(B) North of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location; or

(C) Without a permit for snapper-grouper, excluding wreckfish, on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a permit for snapper-grouper, excluding wreckfish, on board, is limited on that trip to:

* * * * *

(e) *Powerheads off South Carolina.* In the EEZ off South Carolina, a powerhead may not be used to harvest fish in the snapper-grouper fishery. The possession of a mutilated fish in the snapper-grouper fishery in or from the EEZ off South Carolina and a powerhead is prima facie evidence that such fish was harvested by a powerhead.

(f) *Rebreathers and spearfishing gear.* In the EEZ, a person using a rebreather may not harvest fish in the snapper-grouper fishery with spearfishing gear. The possession of a fish in the snapper-grouper fishery while in the water with a rebreather is prima facie evidence that such fish was harvested with spearfishing gear while using a rebreather.

(g) *Authorized and unauthorized gear*—(1) *Authorized gear.* Subject to the specific gear limitations in paragraphs (a) through (f) of this section and in § 646.26, the following are the only gear types authorized in a directed fishery for snapper-grouper in the EEZ:

(i) Vertical hook-and-line gear, including hand-held rods and rods attached to a vessel ("bandit" gear), in either case, with manual, electric, or hydraulic reels;

(ii) Spearfishing gear;

(iii) Bottom longlines; and

(iv) Sea bass pots.

(2) *Unauthorized gear.* All gear types other than those listed in paragraph (g)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear aboard that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, aboard harvested such fish in the EEZ.

(ii) Except as specified in paragraph (h) of this section, a person aboard a vessel with unauthorized gear aboard, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) A vessel with unauthorized gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(A) Taken in the EEZ, regardless of where the transfer takes place; or

(B) In the EEZ, regardless of where such fish were taken.

(iv) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard, as specified in paragraph (g)(2)(iii) of this section.

(h) *Use of sink nets off North Carolina.* A vessel that has on board a permit for snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net aboard, may retain otherwise legal fish in the snapper-grouper fishery taken on that trip with vertical hook-and-line gear or sea bass pots. For the purpose of this paragraph (h), a sink net—

(1) Is a flat net, designed to be suspended vertically in the water to entangle the head or body parts of fish that attempt to pass through the meshes;

(2) Has stretched mesh measurements of 3 to 4¾ inches (7.6 to 12.1 cm); and

(3) Is attached to the vessel when deployed.

10. In § 646.23, paragraphs (a)(2) and (a)(3) are removed; paragraph (a)(4) is redesignated as paragraph (a)(3); new paragraph (a)(2) is added; and paragraph (c)(2) introductory text is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(2) Special limitations on possession and transfer of fish in the snapper-grouper fishery apply to a person fishing with unauthorized gear in the EEZ. See § 646.22(g)(2).

* * * * *

(c) * * *

(2) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

* * * * *

§§ 646.26 through 646.28 [Redesignated as §§ 646.27 through 646.29]

11. Sections 646.26, 646.27, and 646.28 are redesignated as §§ 646.27, 646.28, and 646.29, respectively.

12. In subpart B, new § 646.26 is added to read as follows:

§ 646.26 Restrictions on sale/purchase.

Subject to the restrictions regarding sale/purchase of fish in the snapper-grouper fishery in §§ 646.21(a)(2), (g), and (j)(3); and 646.25(f)—

(a) A person may sell, trade, or barter or attempt to sell, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only to a dealer who has a valid permit for snapper-grouper, excluding wreckfish;

(b) A person may purchase, trade, or barter or attempt to purchase, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only from a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued or from a person who has a valid commercial license to sell fish in the state where the purchase, trade, or barter or attempted purchase, trade, or barter occurs.

(c) Except for the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ by a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of such fish is limited to the bag limits specified in § 646.23(b).

§ 646.28 [Amended]

13. In newly designated § 646.28, the word "Region" is added after the words "South Atlantic" and before the comma.

14. Newly designated § 646.29 is revised to read as follows:

§ 646.29 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part. In addition, the Regional Director may issue a permit for experimental fishing, provided that, as a condition of such permit, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director.

[FR Doc. 94-31421 Filed 12-22-94; 8:45 am]

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50 CFR Part 642

[Docket No. 940710-4293; I.D. 121994B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: December 20, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook and line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone was reached on December 19, 1994. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 a.m., local time, December 20, 1994, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31'06" W. long.) to: (1) the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48' N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994 (59 FR 49356, September 28, 1994). Consequently, with this closure the only commercial king mackerel fishery remaining open in the Gulf of Mexico EEZ is the fishery in the Florida west coast sub-zone by vessels permitted to use run-around gillnets.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

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

Dated: December 19, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-31514 Filed 12-19-94; 4:24 pm]

BILLING CODE 3510-22-F

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50 CFR Part 675

[Docket No. 931100-4043; I.D. 121994C]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), December 20, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by