

19. In subpart C, the following sections are redesignated as set forth in the following table:

Old section subpart C	New section subpart C
385.50 .....	385.30
385.51 .....	385.31
385.52 .....	385.32
385.53 .....	385.33
385.54 .....	385.34

**§ 385.31 [Amended]**

20. In newly designated § 385.31(c), remove the reference “§ 385.22(a)” and add, in its place, the reference “§ 385.15(a)”.

Issued in Washington DC, on this 15th day of April, 1996.

Charles A. Hunnicutt,

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 96-10742 Filed 4-30-96; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Parts 253 and 255**

[Docket No. 960319086-6086-01; I.D. 021696A]

RIN 0648-AF48

**Fisheries Obligation Guarantee Program and Interjurisdictional Fisheries Act Program; Consolidation and Simplification of Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS amends the Fisheries Obligation Guarantee (FOG) Program and Interjurisdictional Fisheries Act (IFA) Program regulations to consolidate, clarify and simplify them in accordance with the National Performance Review (NPR). This final rule also amends reference to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation.

**EFFECTIVE DATE:** May 1, 1996.

**ADDRESSES:** Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301) 713-2390.

**SUPPLEMENTARY INFORMATION:** The FOG Program provides long-term debt to the fisheries and aquacultural industries. The IFA Program promotes and encourages state activities in support of the management of interjurisdictional fisheries resources identified in interstate or Federal fishery management plans. The two regulations governing these programs are consolidated and revised to comply with the NPR's clarity and simplicity objectives. The revision reduces the regulations to about 45 percent of their former size. It replaces outdated, confusing, burdensome, duplicative, or superfluous provisions with clear policies that efficiently effect statutory intent. It adds the minimum provisions needed to make the regulations current. The revision is extensive, so the revised regulations are republished in their entirety.

Section 3506(c)(B)(i) of the PRA requires that agencies inventory and display a current control assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. This final rule eliminates recordkeeping and recording requirements previously contained in § 255.4.

**Classification**

This rule refers to collection of information requirements that have been approved by OMB under the Paperwork Reduction Act (PRA). Applications for the Fisheries Obligation Guarantee Program have been approved under OMB Control No. 0648-0012, with an estimated response time of 8 hours per application. Applications for financial assistance under the Interjurisdictional Fisheries Act Program use standard Federal application procedures approved under OMB Control Numbers 0348-0043, 0348-0044, and 0348-0046.

The estimated response time above includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information to NMFS at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule consolidates and simplifies existing regulations and is administrative in nature. No useful purpose would be served by prior notice and opportunity for comment.

Accordingly, under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, for good cause finds that prior notice and opportunity for comment is unnecessary. Also, because this rule is administrative in nature and not a substantive rule under 5 U.S.C. 553(d), it will be immediately effective upon publication.

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

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator For Fisheries, NOAA.

**List of Subjects**

**50 CFR Part 253**

Disaster assistance, Fisheries, Grant programs-business, Intergovernmental relations, Reporting and recordkeeping requirements, Research.

**50 CFR Part 255**

Fisheries, Fishing vessels, Loan programs-business, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance numbers CFDA No. 11.415 and CFDA No. 11.407, respectively.

Dated: April 23, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter II are amended as follows:

**15 CFR CHAPTER IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table, is amended by adding in the left column under 50 CFR, in numerical order, the

entry "253.15" and in the right column, in corresponding position, the control number "0012".

## 50 CFR CHAPTER II

3. Part 253 is revised to read as follows:

### PART 253—FISHERIES ASSISTANCE PROGRAMS

#### Subpart A—General

Sec.

253.1 Purpose.

#### Subpart B—Fisheries Obligation Guarantee Program

253.10 Definitions.

253.11 Guarantee policy.

253.12 Guaranteed note, U.S. note, and security documents.

253.13 Ability and experience requirements.

253.14 Economic and financial requirements.

253.15 Miscellaneous.

253.16 Fees.

253.17 Demand and payment.

253.18 Program operating guidelines.

253.19 Default and liquidation.

#### Subpart C—Interjurisdictional Fisheries

253.20 Definitions.

253.21 Apportionment.

253.22 State projects.

253.23 Other funds.

253.24 Administrative requirements.

Authority: 46 U.S.C. 1271–1279 and 16 U.S.C. 4101 *et seq.*

#### Subpart A—General

##### § 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of these rules governs the Fisheries Obligation Guarantee Program, which guarantees the repayment of certain long-term fisheries and aquacultural debts. This allows those debts to be placed in the same private investment market that buys U.S. Treasury securities, where interest rates are lower and maturities are longer. The Program does all credit work and holds and services all credit collateral. The Program's guarantee fee makes it self-supporting.

(b) Subpart C implements Title III of Public Law 99–659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate

Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

#### Subpart B—Fisheries Obligation Guarantee Program

##### § 253.10 Definitions.

The terms used in this subpart have the following meanings:

*Act* means Title XI of the Merchant Marine Act, 1936, as amended.

*Actual cost* means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property's useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

*Applicant* means the one applying for a guarantee (the prospective notemaker).

*Application* means an application for a guarantee.

*Application fee* means 0.5 percent of the dollar amount of an application.

*Aquacultural facility* means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

*CCF* means Capital Construction Fund.

*Citizen* means a citizen or national of the U.S. who is otherwise also a citizen for the purpose of documenting a vessel in the coastwise trade under section 2 of the Shipping Act, 1916, as amended.

*Contributory project* means any project that contributes to developing the U.S. fishing industry by: Causing any vessel to catch less overutilized species than before; applying new technology; improving safety or fuel efficiency; making project property more efficient, productive, or competitive; potentially increasing fisheries exports; helping develop an underutilized fishery; or enhancing financial stability, financial performance, growth, productivity, or any other business attribute.

*Demand* means a noteholder's request that the guarantor pay a guaranteed note's full principal and interest balance.

*Division* means the Financial Services Division, National Marine Fisheries Service, National Oceanic and

Atmospheric Administration, U.S. Department of Commerce.

*Dual Use CCF* means a CCF agreement whose qualified vessel is project property and whose deposits are pledged to repayment of the U.S. note.

*Facility* means a fisheries facility or aquacultural facility.

*Financing* means the first permanent debt placed on project property for financing its project cost.

*Fish* means all forms of aquatic animal and plant life, except marine mammals and birds.

*Fishery facility* means land, land structures, water craft that do not fish, and equipment used for transporting, unloading, receiving, holding, processing, or distributing fish for commercial purposes (including any fishery facility for passenger fishing).

*Fishing* means catching wild fish for commercial purposes (including passenger fishing).

*Guarantee* means the guarantor's contractual promise, backed by the full faith and credit of the United States, to repay a guaranteed note if a notemaker fails to repay it as agreed.

*Guarantee fee* means 1 percent of a guaranteed note's average annual unpaid principal balance.

*Guaranteed note* means a promissory note from a notemaker to a noteholder whose repayment the guarantor guarantees.

*Guarantor* means the U.S., acting, under the Act, by and through the Secretary of Commerce.

*Industry* means the fisheries and/or aquacultural industry.

*Noteholder* means a guaranteed note payee.

*Notemaker* means a guaranteed note payor.

*Passenger fishing* means carrying in vessels for commercial purposes passengers who catch fish.

*Program* means the Fisheries Obligation Guarantee Program.

*Project* means the construction of new project property or the refurbishing or purchase of used project property including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

*Project property* means the vessel or facility involved in a project whose actual cost is eligible under the Act for guarantee and controls the dollar amount of a guaranteed note.

*Property* means the project property and all other property pledged as security for a U.S. note.

*Qualified* means acceptable, in the Division's credit risk judgment, and otherwise meeting the Division's requirements for guarantee.

*Refinancing* means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

*Refinancing/assumption fee* means 0.25 percent of the principal amount of a guaranteed note to be refinanced or assumed.

*Refurbishing* means any reconstruction, reconditioning, or other improvement of used project property involving more than routine repair or maintenance.

*Security documents* mean all collateral securing the U.S. note's repayment and all other assurances, undertakings, and contractual arrangements associated with the U.S. note.

*Underutilized fishery* means:

(1) For a vessel, any fish species harvested below its sustainable yield.

(2) For a fisheries facility, any facility using that species or any for which aggregate facilities are inadequate to best use harvests of that or any other species.

*U.S.* means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico; American Samoa; the U.S. Virgin Islands; Guam; the Republic of the Marshall Islands; the Federated States of Micronesia; the Commonwealth of the Northern Mariana Islands; any other commonwealth, territory, or possession of the United States; or any political subdivision of any of them.

*U.S. note* means a promissory note payable by the notemaker to the guarantor.

*Useful life* means the period during which project property will, as determined by the Division, remain economically productive.

*Vessel* means any vessel documented under U.S. law and used for fishing.

*Wise use* means the wise use of fisheries resources and their development, advancement, management, conservation, and protection.

#### **§ 253.11 Guarantee policy.**

(a) A guarantee financing or refinancing up to 80 percent of a project's actual cost shall be available to any qualified citizen otherwise eligible under the Act and these rules, except:

(1) *Vessel construction*. The Program will not finance this project cost. The Program will only refinance this project cost for an existing vessel whose previous construction cost has already been financed (or otherwise paid). Refinancing this project cost for a vessel that already exists is not inconsistent with wise use, but financing it may be.

(2) *Vessel refurbishing that materially increases an existing vessel's harvesting*

*capacity*. The Program will not finance this project cost. The Program will only refinance this project cost for a vessel whose previous refurbishing cost has already been financed (or otherwise paid). Refinancing this project cost is not inconsistent with wise use, but financing it may be.

(3) *Purchasing a used vessel or used fishery facility*. The Program will neither finance nor refinance this project cost (except for a used vessel or fishery facility that the Program purchased and is reselling), unless the used vessel or fishery facility will be refurbished in the United States and will be a contributory project or it will be used in an underutilized fishery.

(b) Every project, other than those specified in paragraphs (a) (1) and (2) of this section, is consistent with wise use and every project, other than those specifically precluded in paragraphs (a) (1) and (2) of this section, may be financed, as well as refinanced.

#### **§ 253.12 Guaranteed note, U.S. note, and security documents.**

(a) *Guaranteed note*—(1) *Principal*. This may not exceed 80 percent of actual cost, but may, in the Division's credit judgment, be less.

(2) *Maturity*. This may not exceed 25 years, but shall not exceed the project property's useful life and may, in the Division's credit judgment, be less.

(3) *Interest rate*. This may not exceed the amount the Division deems reasonable.

(4) *Prepayment penalty*. The Division will allow a reasonable prepayment penalty, but the guarantor will not guarantee a notemaker's payment of it.

(5) *Form*. This will be the simple promissory note (with the guarantee attached) the Division prescribes, promising only to pay principal, interest, and prepayment penalty.

(6) *Sole security*. The guaranteed note and the guarantee will be the noteholder's sole security.

(b) *U.S. note and security documents*—(1) *Form*. The U.S. note and security documents will be in the form the Division prescribes.

(2) *U.S. note*. This exists to evidence the notemaker's actual and contingent liability to the guarantor (contingent if the guarantor does not pay the guaranteed note (including any portion of it), on the notemaker's behalf or if the guarantor does not advance any other amounts or incur any other expenses on the notemaker's behalf to protect the U.S. or accommodate the notemaker; actual if, and to the same monetary extent that, the guarantor does). Payment of the guaranteed note by anyone but the guarantor will amortize

the original principal balance (and interest accruing on it) of the U.S. note to the same extent that it amortizes the guaranteed note. The U.S. note will, among other things, contain provisions for adding to its principal balance all amounts the Program advances, or expenses it incurs, to protect the U.S. or accommodate the notemaker.

(3) *Security documents*. The Division will, at a minimum, require a pledge of all project property (or adequate substitute collateral). The Division will require such other security as it deems the circumstances of each notemaker and project require to protect the U.S. All security documents will secure the U.S. note. The security documents will, among other things, contain provisions for adding to the U.S. note all Program advances, expenditures, and expenses required to protect the U.S. or accommodate the notemaker.

(4) *Recourse*. Significant Program reliance, as a secondary means of repayment, on the net worths of parties other than the notemaker will ordinarily require secured recourse against those net worths. Recourse may be by a repayment guarantee or irrevocable letter of credit. Ordinarily, the Division will require recourse against: All major shareholders of a closely-held corporate notemaker, the parent corporation of a subsidiary corporate notemaker without substantial pledged assets other than the project property, and all major limited partners. The Division may also require recourse against others it deems necessary to protect the U.S. The principal parties in interest, who ultimately stand most to benefit from the project, should ordinarily be held financially accountable for the project's performance. Where otherwise appropriate recourse is unavailable, the conservatively projected net liquidating value of the notemaker's assets pledged to the Program must, in the Division's credit judgment, substantially exceed all projected Program exposure.

(c) *Dual-use CCF*. For a vessel, the Division may require annually depositing some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also both gives the Program control of CCF withdrawals and recourse against CCF deposits and ensures an emergency refurbishing reserve (tax-deferred) for project property.

#### **§ 253.13 Ability and experience requirements.**

A notemaker and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the

Division deems necessary for successfully operating the project property and protecting the U.S. The Program will ordinarily not provide guarantees: For venture capital purposes; to a notemaker whose principals are all from outside the industry; or for a notemaker the majority of whose principals cannot document successful industry ability and experience of a duration, degree, and nature consistent with protecting the U.S.

**§ 253.14 Economic and financial requirements.**

(a) *Income and expense projections.* The Division's conservative income and expense projections for the project property's operation must prospectively indicate net earnings that can service all debt, properly maintain the project property, and protect the U.S. against the industry's cyclical economics and other risks of loss.

(b) *Working capital.* The Division's conservative assessment of an applicant's financial condition must indicate initial working capital prospectively sufficient to provide for the project property to achieve net earnings projections, fund all foreseeable contingencies, and protect the U.S. At the Division's discretion, some portion of projected working capital needs may be met by something other than current assets minus current liabilities (i.e., by a line or letter of credit, noncurrent assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(c) *Audited financial statements.* These will ordinarily be required for any notemaker with large or financially extensive operations whose financial condition the Division believes it cannot otherwise assess with reasonable certainty.

(d) *Consultant services.* Infrequently, expert consulting services may be necessary to help the Division assess a project's economic, technical, or financial feasibility. The Division will select and employ the necessary consultant, but require the applicant to reimburse the Division. A subsequently approved application will not be closed until the applicant reimburses the Division. This cost may, at the Division's discretion, be included in a guaranteed note's amount. For a declined application, the Division may reimburse itself from the remaining 25 percent of the application fee.

**§ 253.15 Miscellaneous.**

(a) *Applicant.* Only the legal title holder of project property (or the lessee

of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an "Application for Fisheries Obligation Program Guarantee" to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) *Investigation and approval.* The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division's sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division's sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) *Insurance.* All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days' advance written notice; vessel seaworthiness will be admitted, and the Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc.)

(d) *Property inspections.* The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property's worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant's expense. Those occurring before application approval may be included in actual cost.

(e) *Guarantee terms and conditions.* The Division's approval in principle letter shall specify the terms and conditions of the guarantor's willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and

conditions are at the Division's sole discretion. An applicant's nonacceptance will result in disqualification for guarantee.

(f) *Noteholder.* The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for nonperformance by the other.

(g) *Closing—(1) Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(2) *Contracts.* The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will ordinarily prepare all contracts, except certain pledges involving real property, which will be prepared by each notemaker's attorney at the direction and approval of the Division's attorney.

(3) *Closing schedules.* The Division will ordinarily close guarantee transactions with minimal services from applicants' attorneys, except where real property pledges or other matters appropriate for private counsel are involved. Real property services required from an applicant's attorney may include: Title search, mortgage and other document preparation, execution and recording, escrow and disbursement, and a legal opinion and other assurances. An applicant's attorney's expense, and that of any other private contractor required, is for applicant's account. Attorneys and other contractors must be satisfactory to the Division. The Division will attempt to meet reasonable closing schedules, but will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of being unable to meet an applicant's and a prospective noteholder's closing schedule. These parties should work closely with the Division to ensure a closing schedule the Division can meet.

**§ 253.16 Fees.**

(a) *Application fee.* The Division will not accept an application without the application fee. Fifty percent of the application fee is fully earned at application acceptance, and is not

refundable. The rest is fully earned when the Division issues an approval in principal letter, and it is refundable only if the Division declines an application or an applicant requests refund before the Division issues an approval in principal letter.

(b) *Guarantee fee.* Each guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent one is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* This fee applies only to refinancing or assuming existing guaranteed notes. It is due upon application for refinancing or assuming a guaranteed note. It is fully earned when due and shall be nonrefundable. The Division may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose is to protect the U.S.

(d) *Where payable.* Fees are payable by check made payable to "NMFS/FSFF." Other than those collected at application or closing, fees are payable by mailing checks to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 73004, Chicago, Ill. 60673. To ensure proper crediting, each check must include the official case number the Division assigns to each guarantee.

#### **§ 253.17 Demand and payment.**

Every demand must be delivered in writing to the Division. Each must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. Should the Division not acknowledge receipt of a timely demand, the noteholder must possess evidence of the demand's timely delivery.

#### **§ 253.18 Program operating guidelines.**

The Division may issue Program operating guidelines, as the need arises, governing national Program policy and administrative issues not addressed by these rules.

#### **§ 253.19 Default and liquidation.**

Upon default of the security documents, the Division shall take such remedial action (including, where appropriate, liquidation) as it deems best able to protect the U.S.' interest.

### **Subpart C—Interjurisdictional Fisheries**

#### **§ 253.20 Definitions.**

The terms used in this subpart have the following meanings:

*Act* means the Interjurisdictional Fisheries Act of 1986, Public Law 99-659 (Title III).

*Adopt* means to implement an interstate fishery management plan by State action or regulation.

*Commercial fishery failure* means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

*Enforcement agreement* means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

*Federal fishery management plan* means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

*Fisheries management* means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

*Fishery resource* means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

*Interjurisdictional fishery resource* means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

*Interstate Commission* means a commission or other administrative body established by an interstate compact.

*Interstate compact* means a compact that has been entered into by two or

more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

*Interstate Fisheries Research Program* means research conducted by two or more state agencies under a formal interstate agreement.

*Interstate fishery management plan* means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

*Landed* means the first point of offloading fishery resources.

*NMFS Regional Director* means the Director of any one of the five National Marine Fisheries Service regions.

*Project* means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

*Research* means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

*Secretary* means the Secretary of Commerce or his/her designee.

*State* means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

*State Agency* means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

*Value* means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

*Volume* means the weight of the fishery resource as landed, at the first point of landing.

#### **§ 253.21 Apportionment.**

(a) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and

landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = A \text{ percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = B \text{ percent}$$

$$\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

- (i) Determine each state's share according to the apportionment formula.
- (ii) Certify the funds to the respective NMFS Regional Director.
- (iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

- (1) Is signatory to an interstate fishery compact;
- (2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;
- (3) Borders one or more of the Great Lakes;
- (4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or
- (5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c) (1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for

any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

- (1) That is not obligated during that year;
- (2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or
- (3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

#### § 253.22 State projects.

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part

of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

#### **§ 253.23 Other funds.**

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in § 253.21(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries

will be divided equally among the Commissions.

#### **§ 253.24 Administrative requirements.**

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

#### **PART 255—[REMOVED]**

4. Under the authority of 46 U.S.C. 1271–1279, part 255 is removed.

[FR Doc. 96–10664 Filed 4–30–96; 8:45 am]

BILLING CODE 3510–22–P

### **COMMODITY FUTURES TRADING COMMISSION**

#### **17 CFR Part 1**

#### **Early Warning Reporting Requirements, Minimum Financial Requirements, Prepayment of Subordinated Debt, Gross Collection of Exchange-Set Margin for Omnibus Accounts and Capital Charge on Receivables From Foreign Brokers**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** Rule 1.12 of the Commodity Futures Trading Commission (Commission or CFTC) sets forth the financial early warning reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs), which are designed to afford the Commission and industry self-regulatory organizations (SROs) sufficient advance notice of a firm's financial or operational problems to take such protective or remedial action as may be needed to assure the safety of customer funds and the integrity of the marketplace. The Commission has determined to adopt amendments to Commission Rule 1.12, applicable to FCMs only, that will: amend paragraph (g) to require the reporting of a reduction in net capital of 20 percent or more within two business days and a planned reduction in excess adjusted net capital of 30 percent or more two business days prior thereto, and to make that paragraph applicable to all FCMs, rather than just those FCMs subject to the risk assessment reporting requirements of Commission Rule 1.15; require reporting of a margin call that exceeds an FCM's excess adjusted net capital which remains unanswered by

the close of business on the day following the issuance of the call; and require reporting by an FCM when-ever its excess adjusted net capital is less than six percent of the maintenance margin required to support positions of noncustomers carried by the FCM, unless the noncustomer is itself subject to the Commission's minimum financial requirements for an FCM or the Securities and Exchange Commission's (SEC's) minimum financial requirements for a securities broker-dealer (BD).

The Commission has also determined to adopt amendments to: Rules 1.17(a)(1)(i) and (ii) to (a) increase the minimum required dollar amount of adjusted net capital for FCMs from \$50,000 to \$250,000, (b) increase the minimum required dollar amount of adjusted net capital for IBs from \$20,000 to \$30,000, and (c) make the amount of adjusted net capital required by a registered futures association for its member FCMs and IBs an element of the Commission's minimum financial requirements for FCMs and IBs; Rule 1.17(h)(2)(vii) with respect to the procedure to obtain approval for prepayment of subordinated debt; and Rule 1.58, which governs gross collection of exchange-set margins for omnibus accounts, to make it applicable to omnibus accounts carried by FCMs for foreign brokers. The Commission believes that these amendments will conform the Commission's rules with those of SROs and therefore should not require changes in the operations of most firms. In addition, the Commission has determined that the five percent capital charge for unsecured receivables from a foreign broker will not apply where the receivables represent deposits required to maintain futures or options positions, the foreign broker has been granted comparability relief under Commission Rule 30.10, and the asset is held in accordance with the relevant grant of relief under Rule 30.10 at the foreign broker, with another foreign broker that has been granted comparability relief under Commission Rule 30.10, or at a depository in the same jurisdiction as either foreign broker in accordance with Commission Rule 30.7.

**EFFECTIVE DATE:** May 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5459 or 418–5439.