

Council Motion

C-4 BSAI Pacific cod Trawl Catcher Vessel LAPP

October 13, 2021

This motion includes the staff recommended changes in Section 8.6 of the analysis to improve consistency to the language included in the Council's purpose and need statement, elements, and options as adopted by the Council at its June 2021 meeting. This revised language is intended to improve consistency in terminology and language that would be used for implementing the Council's recommendation and is not intended to substantively modify the elements or options.

Additions are shown in underline and deletions are shown in ~~striketrough~~. The Council's preferred alternative is shown in **bold**.

Purpose and Need:

Over the last several years, total allowable catch for Pacific cod in the Bering Sea Aleutian Islands (BSAI) has steadily decreased. The pace of the fishery has contributed to an increasingly compressed season, resulting in decreased ability to maximize the value of the fishery, and negatively impacting all fishery participants (catcher vessels, motherships, shoreside processors, and communities). This race for fish also discourages fishing practices that can minimize bycatch and threatens the sustained viability of the fishery. The Council is considering the development of a cooperative-based program to improve the prosecution of the fishery, with the intent of promoting safety and stability in the harvesting and processing sectors, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery dependent communities, and ensuring the sustainability and viability of the resource.

Element 1. Cooperative Style System

Voluntary harvester cooperatives.

Holders of qualified trawl catcher vessel (CV) License Limitation Program (LLP) licenses under Element 2 must join a cooperative annually in association with an eligible licensed processor (Federal Fisheries Permit (FFP) or Federal Processing Permit (FPP)) to harvest their trawl CV Pacific cod cooperative quota (CQ). Harvesters may change cooperatives and cooperative associations may change annually without penalty.

No limitation on the number of LLP license holders or qualifying catch history (legal landings) needed to form a cooperative.

No limitation on the number of cooperatives that may form.

Inter-cooperative formation is allowed.

Option: A minimum of three LLP licenses are needed to form a cooperative.

Element 2: Initial Allocation to LLP Licenses

Catch history to determine initial quota share (QS) allocations under this management action will not be considered beyond December 31, 2019.

2.1. Eligibility – Any LLP license assigned to a vessel that made qualifying catch history (legal landings) of targeted trawl CV BSAI Pacific cod during the qualifying years (or an LLP license as of December 31, 2019, assigned to an American Fisheries Act (AFA) trawl CV that had BSAI Pacific cod catch in 1997)¹ and any transferable Aleutian Islands (AI) endorsement is eligible to receive QS.

Option: Establish a minimum threshold percentage range of 0.25%-1% by LLP holder for eligibility to receive QS. Partial ownership of LLP licenses counts toward the minimum threshold using the individual and collective rule. Does not apply to those 8 LLP licenses with a transferable AI endorsement.

2.2. Harvester Allocations – Eligible LLP licenses must be assigned to a cooperative for the cooperative to receive annual Pacific cod CQ. The initial allocation of QS will be made to eligible LLP licenses or transferable AI endorsements, with each LLP license’s or transferable AI endorsement's QS based on the Pacific cod qualifying catch history (legal landings) of targeted BSAI Pacific cod authorized by that LLP license or a transferable AI endorsement² during the following qualifying years:

Option 2.2.1: 2014 - 2019

Option 2.2.2: 2009 – 2019

Option 2.2.3: 2004 –2019

Option 2.2.4: Allocations based on a blend of catch history and AFA sideboard history³

Suboptions to credit catch history/sideboard at:

Suboption 2.2.1: 50%/50%

Suboption 2.2.2: 80%/20%

Suboption 2.2.3: 20%/80%

Suboptions (applicable to Options 2.2.1 – 2.2.4):

Suboption 2.2.1. Drop 1 Year

Suboption 2.2.2. Drop 2 Years

2.3. For the initial allocation of QS, qualifying catch history is attached to the LLP license at the time of harvest. If multiple LLP licenses authorized catch by a vessel, in the absence of an agreement provided by the LLP license holder at the time of application, qualifying catch history will be:

Option 2.3.1: divided equally between those LLP licenses.

Option 2.3.2: assigned to an LLP license by the owner of the vessel that made the catch.

2.4. Annual CQ will be issued to each cooperative by NMFS based on the aggregate QS attached to LLP licenses that are assigned to the cooperative. NMFS will issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. QS will not be designated for harvest in a management area (i.e., BS or AI) but may be harvested from either area.

¹The latter criteria (LLP assigned to an AFA trawl CV that had BSAI Pacific cod catch in 1997) is only applicable if one of the blend options is selected under Option 2.2.4.

² **Landings of targeted AI Pacific cod in the parallel fishery prior to receiving a transferable AI endorsement (2004 through September 13, 2009) in addition to legal landings of targeted Pacific cod in the parallel and federal fishery after receiving a transferable AI endorsement would qualify under the Council’s criteria for catch history.**

³ Using staff approach of blending 1997 sideboard history with qualifying year option catch history attached to the eligible LLP license at the time of implementation of the trawl CV LAPP.

2.5. Option to allocate A and B season BSAI trawl CV Pacific cod only:

A and B season trawl CV Pacific cod sector allocations (after deduction of the ICAs) will be allocated to cooperatives as CQ. Annual CQ attributable to each LLP license will be that LLP license's proportional share of the total QS.

The C season trawl CV Pacific cod allocation will remain 15 percent and remain a limited access trawl CV fishery and will be available to any trawl CV with an eligible groundfish LLP license with an applicable area endorsement. The C season limited access fishery will be managed as currently by NMFS, including management of incidental catches of Pacific cod in other directed fisheries. C season trawl CV sector apportionments (including A and B season ICAs and CQ remaining after June 10) that NMFS projects to go unused are subject to reallocation to other sectors under current reallocation rules.

2.6. All groundfish species not allocated to cooperatives will be managed by maximum retainable amounts (MRAs), as under current management.

2.7 The BSAI Pacific cod sideboard limit for AFA trawl CVs at 50 CFR 679.64(b)(3)(ii) is removed for the A and B season upon implementation of this program. The BSAI Pacific cod sideboard limit for AFA trawl CVs at 50 CFR 679.64(b)(3)(ii) is maintained for the C season upon implementation of this program.

The BSAI halibut PSC sideboard limit for AFA trawl CVs at 50 CFR 679.64(b)(4)(i) and Table 40 is removed upon implementation of this program.

The BSAI crab PSC sideboard limit for AFA trawl CVs at 50 CFR 679.64(b)(4)(i) and Table 41 is maintained upon implementation of this program.

Element 3. Prohibited Species Catch Limits

The annual crab and halibut PSC limits available to the BSAI trawl CV Pacific cod sector will be established through the annual specification process as follows:

Option 3.1: Crab PSC limits will be maintained at the BSAI trawl limited access sector level.

Option 3.2: Establish separate PSC limits for the BSAI trawl CV Pacific cod sector. Halibut PSC limit will be apportioned based on historical use (using qualifying years selected under Element 2) between the trawl CV sector and the AFA catcher processor (CP) sector. Crab PSC limits will be apportioned based on the proportion of BSAI Pacific cod allocated to the trawl CV sector and the AFA CP sector.

Option 3.3: Reduce PSC limit to BSAI trawl CV Pacific cod sector.

Suboption 3.3.1: Reduce halibut PSC limit by 10%; 25%; 35%.

Suboption 3.3.2: Reduce crab PSC limits by: 10%; 25%; 35%; 45%.

Red king crab Zone 1: (80% reduction from 2019 limit)

C. opilio Bycatch Limitation Zone: (69% reduction from 2019 limit)

C. bairdi Zone 1 and Zone 2: (48% reduction from 2019 limit)

Suboption 3.3.3: Phase in halibut PSC limit reduction over ~~3~~2 years. ~~One-third~~half of the total halibut PSC limit reduction is implemented each year.

Option 3.4: If Element 2.5 is selected, establish separate C season halibut and crab PSC apportionments (5%-15%) before applying PSC limit reductions for the PCTC program.

Each cooperative will receive annual CQ of Pacific cod and apportionments of PSC limits based on members' qualifying catch histories (and processing histories, if applicable) to be harvested in accordance with the harvest cooperative agreement. The sector's PSC limits will be apportioned to cooperatives in proportion to its initial Pacific cod CQ apportionment and will be monitored at the cooperative level, resulting in a prohibition on directed fishing for Pacific cod (halibut PSC limit) or a prohibition on directed fishing for Pacific cod in a specified area (crab PSC limits) by that cooperative if the cooperative PSC limit apportionment is reached. PSC limits are transferable between cooperatives based on the same rules established for Pacific cod CQ.

Element 4: Gulf of Alaska (GOA) Sideboards

Option 4.1: All ~~AFA non-GOA~~ non-exempt AFA CVs and AFA LLP licenses will be sideboarded (in aggregate for all GOA groundfish fishing activity) and for halibut PSC (on the annual amount of the total trawl halibut PSC limit), except for vessels when participating in the Central GOA Rockfish Program, based on their GOA catch history during the BSAI Pacific cod qualifying period.

Prohibit directed fishing in regulations for the GOA non-exempt AFA CVs and LLPs for Southeast Outside pollock, Western shallow-water flatfish, and both Central and Eastern deep-water flatfish, and Eastern Pacific Ocean perch.

Option 4.2: AFA GOA-exempt and non-AFA CVs assigned to LLP licenses and CVs assigned to under 60' LLP licenses with AI transferable endorsements that receive annual BSAI Pacific cod CQ will not be permitted to lease their BSAI Pacific cod CQ as a condition of benefiting from a GOA sideboard exemption. If the vessel assigned to the qualified GOA exempt LLP license does not fish the GOA during the calendar year, except for the Central GOA Rockfish Program, the BSAI Pacific cod CQ generated by the LLP license can be leased that calendar year. Cooperatives will be required to monitor GOA AFA exempt and non-AFA vessels and vessels assigned to under 60' LLP licenses with AI transferrable endorsements to ensure they do not lease their BSAI Pacific cod CQ and implement a penalty structure for violations. Cooperatives will be required to report leasing activities and penalties issued in the BSAI Pacific cod cooperative annual report.

Suboption 4.2.1: AFA GOA-exempt, ~~and~~ non-AFA CVs, and CVs assigned to under 60' LLP licenses with AI transferable endorsements with LLP licenses of less than ~~200~~ 300 mt, 400 mt, or 600 mt of average annual qualifying BSAI Pacific cod history may lease their BSAI Pacific cod CQ and benefit from the GOA sideboard exemption.

Element 5: Processor and Community Provisions

5.1. No closed class of processors; all processors with an eligible FPP or FFP are eligible to process BSAI Pacific cod CQ under this program (subject to eligibility requirements under BSAI FMP Amendment 120 to limit CPs acting as motherships).

5.2. Limit (sideboard) on directed BSAI Pacific cod CQ that can be delivered by trawl CVs to eligible CPs acting as motherships. The sideboard would be based on BSAI Pacific cod processing history by eligible

CPs during qualifying years under Element 2. **The sideboard will be assigned to the LLP license authorizing the CP to act as a mothership in the BSAI Pacific cod fishery.**

Option 5.2.1: Each eligible CP acting as a mothership may process up to the higher of 1) 125% of the eligible CP's processing history (percentage based on qualifying years selected in Element 2.2 no drop year); or 2) the history (percentage based on qualifying years selected under Element 2.2) from LLP licenses that are owned (in excess of 75%) directly or indirectly by the owner of a CP LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod trawl CV fishery (as of December 31, 2019), not to exceed 125% of the eligible CP's processing history (percentage based on qualifying years selected in Element 2.2 no drop year).

Option 5.2.2: Each eligible CP acting as a mothership may process up to the eligible CP's processing history (percentage based on qualifying years selected in Element 2.2).

5.3. Limit number of trawl CVs in the directed BSAI Pacific cod fishery that can deliver to eligible CPs acting as motherships. Trawl CVs can qualify for the offshore sector in one of two ways:

- 1) An LLP license that is owned (in excess of 75%) directly or indirectly by the owner of a CP LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod fishery (as of December 31, 2019)
- 2) An LLP license in which a) 90% or b) 75% or more of the quota arising from the history of the LLP license qualifying for the non-CDQ BSAI trawl CV Pacific cod fishery was delivered offshore during the qualifying years selected in Element 2.2.

Only initial quota arising from the history of an LLP license qualifying for the offshore sector will be permitted to be delivered offshore. Only vessels that are assigned LLP licenses that qualify for the offshore sector will be permitted to make offshore deliveries. Vessels using LLP licenses that are permitted to deliver offshore may also deliver any or all of the quota derived from the LLP license to shorebased or floating processors.

5.4. Allocation of QS to processors (this option is only applicable to Bering Sea processors and eligible CPs if AI provisions are selected under element 6):

Onshore and offshore processors with an eligible FFP or FPP (subject to eligibility requirements under BSAI FMP Amendment 120 to limit CPs acting as motherships) that have history of processing in the federal BSAI Pacific cod trawl CV fishery will be eligible to receive a percentage of total QS based on each onshore processor's and offshore processor's processing history. To be used, the processor's CQ would be transferred to the CV cooperative.

If a processor holding QS does not associate with a cooperative, that processor's CQ will be divided among cooperatives in the same proportion as the processor's CQ assigned to individual cooperatives by the associated processor that year relative to total processor derived CQ that was issued that year.

If a processor associated with more than one cooperative during a year, the CQ derived from their processor permit would be divided between the cooperatives in the same proportion as the CQ derived from LLP licenses.

Option: A cooperative cannot assign a greater proportion of the CQ resulting from processor held QS to an LLP license owned by that processor for harvest by a vessel owned by that processor than the LLP license would have brought into the cooperative absent any processor held QS. The cooperative

will monitor this provision and include reporting on harvest of CQ resulting from processor held QS in the BSAI Pacific cod cooperative annual report.

Percent of QS to be allocated to eligible processors:

- Option 5.4.1: 5%
- Option 5.4.2: 10%
- Option 5.4.3: 15%
- Option 5.4.4: 20%
- Option 5.4.5: 22.5%**
- Option 5.4.5~~6~~: 25%
- Option 5.4.6~~7~~: 30%

Processing history years (including any drop year option selected in element 2.2) to receive QS are the same as harvester years in Element 2.

Processors that are no longer active (no longer hold an FPP) would not be issued QS. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

Element 6: Aleutian Islands Processor Provisions

Options 6.1 and 6.2 are mutually exclusive.

Under this element:

An AI shoreplant is defined consistent with vacated Amendment 113 regulations.

An AI shoreplant operating under the provisions of this element is exempt from the processing facility use cap in element 8.4.

All cooperatives will be required to establish an intercooperative agreement that describes how either the set-aside provision in option 6.1 or the annual AI community shoreplant QS in option 6.2 will be administered by the cooperatives to ensure that harvests in the Bering Sea do not exceed the minimum set aside or shoreplant allocation amounts. This intercooperative agreement ~~should~~ **must** establish how the cooperatives intend to harvest the set-aside or shoreplant QS in years when it applies. This intercooperative agreement must be provided as part of the annual cooperative application and is required before NMFS can issue CQ. A cooperative intending to harvest any amount of the set-aside must provide the cooperative's plan for coordinating harvest and delivery of the set-aside with an AI shoreplant in the cooperative application.

Option 6.1: In any year when the community of Adak and/or Atka files a notice of intent to process, require the cooperative(s) to reserve a set-aside for delivery to an AI shoreplant. The amount of the set-aside (AI CQ reserve) will be ~~10~~ **12%** to 25% of the BSAI CV trawl directed A season CQ and is in effect ~~only~~ **during the A and B season**. Any remaining portion of the ~~set-aside~~ **AI CQ reserve** will be reallocated to cooperatives in the same proportion as the initial CQ if Adak and/or Atka withdraws its intent to operate notice during the A or B season, ~~or after the end of the A season, whichever comes first.~~

The intercooperative agreement must establish how cooperatives would ensure that CVs < 60 feet LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to

harvest a percentage of the AI ~~set aside~~ CQ reserve for delivery to an AI shoreplant. Option 1: 50%, option 2: 25%, or **option 3: 10% of the A-season AI community ~~set aside~~ CQ reserve.**

NMFS will establish a separate AI Incidental Catch Allowance (ICA) and AI Directed Fishing Allowance (DFA) to support the AI CQ reserve.

When the AI CQ reserve is set equal to the AI DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to AI shoreplants for processing.

When the AI DFA is greater than the AI CQ reserve amount, the difference between the AI DFA and the AI CQ reserve will be available for directed fishing by all non-CDQ fishery sectors with sufficient A-season allocations and may be processed by any eligible processor.

Option 6.2: In any year when the community of Adak and/or Atka files a notice of intent to process, annual QS shall be issued to the plant operator designated in that notice of intent. In the event, one community issues a notice (option 1: 5.5%, option 2: 10%) of the total BSAI trawl CV Pacific cod CQ (prior to QS based on harvesting or processing histories) shall be issued to the plant. In the event both communities issue a notice, the CQ shall be divided equally between two plants. Adak or Atka may withdraw its intent to operate notice during the season if necessary. In that case, the unharvested portion of the CQ will be reissued to the other AI shoreplant if it is operating.

Suboption 6.2.1: If no AI shoreplants are operating, the amount of annual CQ equivalent to unharvested portion will be reissued to cooperatives (holders of LLP licenses with BS and/or AI harvest history in proportion to their initial CQ).

Annual AI community shoreplant allocations shall be transferable to any cooperative(s) (and between cooperatives) for harvest by member vessels that are assigned an AI trawl CV LLP license eligible under this program. CQ shall be harvestable exclusively in the AI and landed in the AI management region.

Suboption 6.2.2: If the community of Adak and/or Atka files a notice of intent to process, annual CQ should be issued to an entity representing the community designated in the notice of intent.

Suboption 6.2.3: AI trawl CVs less than 60' assigned to an LLP license with a transferable AI endorsement will be eligible under the program to be assigned to a cooperative annually in association with the Adak and/or Atka plant regardless of whether they otherwise qualify for the program. Option 1: 50%, option 2: 25%, or option 3: 10% of the annual AI community shoreplant allocation must be harvested by these vessels.

Element 7. Transferability

7.1. Initially issued QS are attached to trawl CV LLP licenses and are non-severable from the LLP licenses. Transfer of an LLP license eligible for this program results in the transfer of any program eligibility and QS associated with the LLP license.

Suboption 7.1.1: For the LLP licenses associated with the non-exempt AFA vessels, within ninety (90) days of initial issuance of QS, the owners of the LLP licenses that are associated with AFA non-exempt CVs that had engaged in fish transfer agreements during the qualifying periods and whose QS allocation at initial issuance does not exceed the ownership cap in element 8.1 may transfer the QS between other LLP licenses associated with AFA non-exempt

vessels subject to the ownership cap in element 8.1. After these transfers are approved by NMFS, the BSAI Pacific cod QS will no longer be severable from the LLP license to which it was reassigned unless modification is supported by an operation of law.

7.2. QS based on processing history are issued as separate permits, and the permit is only transferable to another processor. Permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP. The QS is non-severable from the permit except in the case that transfer of the permit to another eligible processor would result in exceeding the use cap under Option 8.3. In that case, the portion of the QS over the cap is allowed to be severed from the permit and transferred to another eligible processor permit or shoreside processor that holds an FPP.

7.3. Annual Pacific cod CQ and PSC limits (whether derived from harvesting or processing histories) are transferable between cooperatives.

7.4. Post-delivery transfers of CQ are permitted, but must be completed by ~~December 31~~ August 1 (i.e., ~~prior to annual CQ expiring~~).

Element 8: Ownership and Use Caps

8.1. Harvester-issued QS. Processor-issued QS does not count toward this use cap. No person may hold or use more than option: 5%- 10% of the Pacific cod QS issued:

Option 8.1.1: using the individual and collective rule or

Option 8.1.2: using 10% ownership threshold or management and control for assigning QS to a holder's/entity's cap.

Suboption 8.1: Persons over the cap at the time of QS issuance are grandfathered.

8.2. No vessel may harvest more than option: 3%; 4%; 5% of the annual Pacific cod CQ issued in the fishery.

Option 8.2.1: Vessels over the cap at the time of QS issuance are grandfathered. The grandfather provision is applied to the vessel designated on an LLP license that yields more than 5% of the annual Pacific cod CQ at the time of initial allocation. This grandfather provision is not transferrable if the LLP license is transferred to a new owner.

8.3. Processor-issued QS⁴: No person may hold or use more than option: 15% - 20% of the Pacific cod QS:

Option 8.3.1: using the individual and collective rule or

Option 8.3.2: using 10% ownership threshold or management and control for assigning QS to a holder's/entity's cap.

Suboption 8.3: Persons over the cap at the time of QS issuance are grandfathered.

8.4. No ~~processing facility company~~ may process more than 20%-30% of the Pacific cod CQ.

Option 8.4.1: using the individual and collective rule

⁴This cap refers to any QS initially issued to processors on a processor permit under Element 5.3.

Option 8.4.12: Processing facilities Company over the cap at the time of QS issuance are grandfathered.

Element 9. Cooperative Provisions

Annual cooperative applications must be filed on or before November 1 of the preceding year.

Cooperatives shall be formed by holders of qualified LLP licenses with trawl CV Pacific cod QS. Each LLP license may be assigned to one cooperative. A list of CVs (both trawl and pot gear vessels, if Element 14 is selected) eligible to harvest a portion of that cooperative's CQ must be identified in the annual cooperative application.

Cooperatives are intended only to conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives.

Membership agreements will specify that processor affiliated members cannot participate in any price setting negotiations, except as permitted by antitrust laws.

Element 10. Share duration

All QS and allowances under this program are revocable privileges that 1) may be revoked, limited or modified at any time; 2) shall not confer any right of compensation to the holder, if they are revoked limited, or modified, and; 3) shall not create or be construed to create any right, title or interest in or to any fish before the fish is harvested by the holder.

The duration of all QS and associated PSC apportionments is 10 years. These permits will be renewed before their expiration, unless revoked, limited, or modified.

Element 11. Monitoring

All vessels harvesting CQ will be in ~~full coverage (100% observer or electronic monitoring coverage category, if applicable)~~. This element is not intended to modify the observer coverage exception provided for CVs delivering unsorted codends to a mothership or the current at-sea observer data transmission requirements for non-AFA trawl CVs for the first 3 years after implementation. ~~NMFS will develop a~~ Monitoring and enforcement provisions necessary will be implemented to track quota, harvest, PSC, and use caps. Shoreside processors will be required to operate under a NMFS-approved Catch Monitoring and Control Plan. The Council authorizes NMFS to report weekly vessel-level PSC information as authorized under Magnuson-Stevens Act (MSA) Sec 402(b)(2)(A).

Element 12. Reporting and Program Review

Each cooperative shall annually produce a report for the Council describing its membership, cooperative management, and performance in the preceding year including use of CQ derived from processor issued QS and harvest and delivery of the AI CQ reserve, if applicable.

Per the MSA, a formal detailed review of the program shall be undertaken 5 years after implementation, with additional reviews, at a minimum, each seven years thereafter.

Element 13. Cost recovery

A fee, not to exceed 3% of the ex-vessel value, will be charged on all program landings to cover the actual costs directly related to the management, data collection, and enforcement of the program.

Element 14. Gear Conversion

Pacific cod CQ associated with trawl CV LLP licenses may be fished annually by a CV using pot gear. A pot endorsement is not required, but the LLP license used by a CV must have the appropriate area endorsement. Harvest would be deducted from the annual trawl CQ account to which the LLP license is assigned and will not affect sector allocations. CQ harvested by a pot CV is not permanently designated as pot CV CQ. If Option 2.5 is selected, gear conversion only applies to the A and B seasons based on the start and end dates for the trawl fishery. Pot CVs harvesting CQ would be subject to 100% coverage and PSC use would be deducted from the PSC limit allocated to the cooperative. NMFS will develop monitoring and enforcement provisions necessary to track quota, harvest, PSC, and use caps.

The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).

The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.