

(4) Any other relevant factors or conduct.

(e) *Non-binding examples of unreasonable conduct.* The following are examples of the kinds of conduct that may be considered unreasonable under 46 U.S.C. 41104(a)(3) when linked to a refusal to provide cargo space accommodations:

(1) Blank sailings or schedule changes with no advance notice or with insufficient advance notice;

(2) Vessel capacity limitations not justified by legitimate transportation factors;

(3) Failing to alert or notify shippers with confirmed bookings of any other changes to the sailing that will affect when their cargo arrives at its destination port;

(4) Scheduling insufficient time for cargo tendering or vessel loading so that cargo is constructively refused;

(5) Providing inaccurate or unreliable vessel information; or

(6) The de facto, absolute, or systematic exclusion of exports in providing cargo space accommodations.

(f) *Elements for claims.* The following elements are necessary to establish a successful private party or enforcement claim under 46 U.S.C. 41104(a)(10) with respect to refusals of vessel space accommodations provided by an ocean common carrier:

(1) The respondent must be an ocean common carrier as defined in 46 U.S.C. 40102;

(2) The respondent refuses or refused to deal or negotiate with respect to vessel space accommodations; and

(3) The ocean common carrier's conduct is unreasonable.

(g) *Non-binding considerations when evaluating unreasonable conduct.* In evaluating the reasonableness of an ocean common carrier's refusal to deal or negotiate with respect to vessel space accommodations, the Commission may consider the following factors:

(1) Whether the ocean common carrier followed a documented export policy that enables the timely and efficient movement of export cargo;

(2) Whether the ocean common carrier engaged in good faith negotiations;

(3) Whether the refusal was based on legitimate transportation factors; and

(4) Any other relevant factors or conduct.

(h) *Non-Binding examples of unreasonable conduct.* The following are examples of the kinds of conduct that may be considered unreasonable under 46 U.S.C. 41104(a)(10) when linked to a refusal to deal or negotiate:

(1) Quoting rates that are so far above current market rates they cannot be considered a good faith offer or an

attempt at engaging in good faith negotiations; or

(2) The de facto, absolute, or systematic exclusion of exports in providing vessel space accommodations.

(i) *Use of sweeper vessels.* Ocean common carriers are not precluded from using sweeper vessels previously designated for that purpose to reposition empty containers; however, the designation of a vessel as a sweeper vessel is subject to Commission review to determine whether the designation results in an unreasonable refusal of ocean carriage services.

(j) [Reserved]

(k) *Shifting the burden of production.* In accordance with applicable laws, the following standard applies:

(1) The initial burden of production to establish a prima facie case of a violation of this part is with the complainant or the Commission's Bureau of Enforcement, Investigations, and Compliance.

(2) Once a complainant sets forth a prima facie case of a violation, the burden shifts to the ocean common carrier to justify that its actions were reasonable.

(3) The ultimate burden of persuading the Commission always remains with the complainant or the Commission's Bureau of Enforcement, Investigations, and Compliance.

#### **§ 542.2–542.99 [Reserved]**

■ 2. Delayed indefinitely, add § 542.1(j) to read as follows:

#### **§ 542.1 Definition of unreasonable refusal of cargo space accommodations when available and unreasonable refusal to deal or negotiate with respect to vessel space provided by an ocean common carrier.**

\* \* \* \* \*

(j) *Documented export policy.* Ocean common carriers must file with the Federal Maritime Commission a documented export policy that enables the timely and efficient movement of export cargo.

(l) Each ocean common carrier must submit a documented export policy to the Commission once per calendar year and include, in a manner prescribed by the Commission, pricing strategies, services offered, strategies for equipment provision, and descriptions of markets served. Updates may be submitted more than once per year if the ocean common carrier chooses to do so. Other topics a documented export policy should also address, if applicable, include:

(i) The effect of blank sailings or other schedule disruptions on the ocean common carrier's ability to accept shipments;

(ii) The ocean common carrier's rules and practices for the designation and use of sweeper vessels; and

(iii) The alternative remedies or assistance the ocean common carrier would make available to a shipper to whom it refused vessel space accommodations.

(2) A documented export policy required to be filed by this part must be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, [exportpolicy@fmc.gov](mailto:exportpolicy@fmc.gov).

(3) The documented export policies filed in accordance with this section shall not be circulated outside of the Federal Maritime Commission. These documents, and the information contained therein, shall not be publicly disclosable, in whole or in part, including in response to requests under the Freedom of Information Act. The information may, however, be disclosed to the extent that it is relevant to an administrative or judicial action or proceeding; or to either House of Congress, or a duly authorized committee or subcommittee of Congress.

■ 3. Delayed indefinitely, add § 542.99 to read as follows:

#### **§ 542.99 OMB control number assigned pursuant to the Paperwork Reduction Act.**

The Commission has received Office of Management and Budget approval for the collection of information in § 542.1(k) pursuant to the Paperwork Reduction Act of 1995, as amended. The valid control number for this collection is 3072–XXXX.

By the Commission.

David Eng,  
Secretary.

[FR Doc. 2024–16148 Filed 7–22–24; 8:45 am]

BILLING CODE 6730–02–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 48 CFR Parts 1306 and 1353

[DOCKET NO.: 240711–0188]

RIN 0605–AA68

#### Discontinue Use of Form CD–492, Justification for Other Than Full and Open Competition

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Commerce) is issuing this final rule to discontinue use of Form CD–492, *Justification for Other Than Full and Open Competition*, and to make an

editorial change to the associated regulations. The purpose of the administrative rulemaking is to cease the requirement for acquisition teams to use a prescribed form to document justifications for other than full and open competition under the Federal Acquisition Regulation (FAR) and to make an editorial change to the regulatory text to correct a reference to Department legal review procedures by replacing the word “concurrence” with the word “review.” Contracting Officers will be required to comply with the content requirements set forth in the FAR when documenting their determinations.

**DATES:** *Effective:* August 22, 2024.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Todd Hill, Procurement Analyst, at 240–490–1044, or by email at [thill1@doc.gov](mailto:thill1@doc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce is issuing this final rule to discontinue use of Form CD–492, *Justification for Other Than Full and Open Competition*. The purpose of the administrative rulemaking is to cease the requirement for acquisition teams to use a prescribed form to document justifications for other than full and open competition under the Federal Acquisition Regulation (FAR) in 48 CFR part 6. The CD–492 was originally developed to provide consistency across Commerce when documenting the approval or disapproval of justifications for other than full and open competition within a hardcopy contract file. Commerce has fully transitioned to electronic contract files and the static form is no longer considered the most efficient method of documenting the approval or disapproval of such a justification. Contracting Officers will be required to comply with the content requirements set forth in FAR 6.303–2 when documenting their determinations. Commerce has also determined that an editorial change is necessary to better align with internal Commerce processes, therefore, Commerce will also make an editorial change to the last sentence of section 1306.303–70 to correct a reference to Department legal review procedures by replacing the word “concurrence” with the word “review.”

**Classification**

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Commerce determined that this rule qualifies for exemption from the Administrative Procedure Act’s (APA) requirement for a public notice and comment period, and that it may therefore proceed directly to the final rule stage. Under 5 U.S.C. 553(b)(A), rulemakings that are rules of agency organization, procedure, or practice are exempt from providing the public with a notice and comment period. This rule only removes the requirement for acquisition teams to use Form CD–492. Therefore, this rule qualifies for the exemption and no public notice and comment period is required.

Additionally, Commerce finds good cause to waive the notice and public comment period for this rule because the effect of the rule does not place any burden on the public or require the public to undertake or cease any particular action. Oppositely, this rulemaking only removes the requirement for acquisition teams to use Form CD–492. Therefore, a public notice and comment period would be unnecessary and qualifies for waiver under the APA (see 5 U.S.C. 553(b)(B)).

**List of Subjects**

*48 CFR Part 1306*

Government procurement.

*48 CFR Part 1353*

Government procurement, Reporting and recordkeeping requirements.

Therefore, in accordance with 41 U.S.C. 414 and 48 CFR 1.301 through 1.304, the Department of Commerce amends 48 CFR parts 1306 and 1353 as follows:

**PART 1306—COMPETITION REQUIREMENTS**

■ 1. The authority citation for part 1306 continues to read as follows:

**Authority:** 41 U.S.C. 414; 48 CFR 1.301–1.304.

■ 2. Revise section 1306.303–70 to read as follows:

**1306.303–70 Documentation and legal review of justifications.**

The justification for providing for other than full and open competition in accordance with FAR 6.303–2 shall contain sufficient facts and rationale to justify the use of the authority cited and include all of the content set forth in FAR 6.303–2 as appropriate for the cited authority. If the estimated value of the procurement is over legal review thresholds, review by the Procurement Counsel is required.

**PART 1353—FORMS**

■ 3. The authority citation for part 1353 continues to read as follows:

**Authority:** 41 U.S.C. 414; 48 CFR 1.301–1.304.

**1353.206 [Removed]**

■ 4. Remove section 1353.206.

**Olivia J. Bradley,**

*Senior Procurement Executive and Director for Acquisition Management.*

[FR Doc. 2024–16181 Filed 7–22–24; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 240327–0090; RTID 0648–XE116]

**Pacific Halibut Fisheries of the West Coast; 2024 Catch Sharing Plan; Inseason Action**

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

**ACTION:** Temporary rule; inseason adjustment; request for comments.

**SUMMARY:** NMFS announces inseason action for the Washington and Oregon subareas in the Pacific halibut recreational fishery in the International Pacific Halibut Commission’s (IPHC) regulatory Area 2A. Specifically, this action announces additional fishing dates in August and September for the Washington subareas and in August through October for the Oregon Central Coast subarea. This action is intended to provide opportunity for anglers to achieve the catch limit in the Pacific Fishery Management Council’s (Council) 2024 Pacific Halibut Catch Sharing Plan.

**DATES:**

*Effective date:* August 1, 2024 through September 30, 2024 for Washington and through October 31, 2024 for Oregon.

*Comment date:* Comments due on or before August 7, 2024.

**ADDRESSES:** Submit your comments, identified by NOAA–NMFS–2024–0014, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0014 in the Search box. Click on the “Comment” icon,