

any vessel accounts not renewed before the November 30 deadline, and “any QP in the vessel account[s] will expire and surplus QP will not be available for carryover.”⁶

The IAD also informed Appellant of his right to appeal the IAD to NAO pursuant to 15 C.F.R. Part 906.⁷ The IAD explained that in order for Appellant’s appeal to receive consideration, it “must be faxed or postmarked no later than thirty (30) days from the date of this letter.”⁸

On April 29, 2020, Appellant’s attorney, ██████████, filed a Written Petition of Appeal (Petition) on behalf of Appellant.⁹ In the Petition, Appellant argues he was unable to submit a timely vessel account renewal package because he was working in another state when the package was due to be submitted.¹⁰ Appellant explains that after “a myriad of factors” left him “financially devastated,” he sought out employment in the State of ██████████.¹¹ Appellant states he remained ██████████ during the renewal period of October 1, 2019, to November 30, 2019, and that “the necessary documents and information for submitting the package were in ██████████.”¹² As a result, Appellant asserts that although he “intended on completing the renewal application,” he was unable to do so by the vessel account renewal deadline.¹³

Appellant also maintains he was unable to file a timely appeal because he was not served with SFD’s IAD until after the deadline for filing the appeal had passed. According to Appellant, ██████████, “maintained an address at ██████████,” which serves as both a business address and a residence.¹⁴ Appellant insists, however, that “nobody was frequenting the property” at the time the IAD “was alleged to have been delivered.”¹⁵ Appellant does note that ██████████ bookkeeper, “was at the registered address weekly checking mail and packages.”¹⁶

Appellant states that in “late February,” after the United States Postal Service (USPS) informed him that NMFS “had made multiple attempts to submit a certified letter to ██████████, ██████████” he contacted NOAA to inform them that nobody was at the ██████████ CA, address to accept a certified letter.¹⁷ Appellant maintains, however, that “no alternative arrangements were made to deliver the letter.”¹⁸

Appellant further states that in “late February or early March,” he inquired with NOAA employee ██████████ about appealing SFD’s IAD, and was told by ██████████ that

⁶ Id.

⁷ Id.

⁸ Id. at p. 2.

⁹ Appeal Tab, *Written Petition of Appeal* – ██████████, dated April 28, 2020; received April 29, 2020.

¹⁰ Id. at p. 1.

¹¹ Id. at p. 2.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

“he could wait until April when things would be less hectic.”¹⁹ Appellant recalls that on April 1, 2020, NMFS employee, ██████████, contacted Appellant to inform him that WCRO SFD had sent Appellant the IAD in late February, and that the time to file an appeal had passed.²⁰ Appellant recalls that ██████████ emailed him a copy of the IAD on April 1, 2020.²¹ According to Appellant, this was when he first “receive[d] service” of the IAD.²²

Accompanying his Petition, Appellant provided a printout of his email exchanges with ██████████ ██████████ on April 1, 2020.²³ This document reflects that on April 1, 2020, ██████████ sent Appellant the following email:

Hi ██████████

██████████ [sic] ██████████ was sent a letter in late February from ██████████, the Assistant Regional Administrator for Sustainable Fisheries. The letter was an Initial Administrative Determination (IAD) about a failure to renew the vessel account for the ██████████ that made the vessel account ineligible to receive carryover. The IAD notified you of the loss of carryover, and informed you of your right to appeal.

Did you send in an appeal?

Regards,
██████████²⁴

A few minutes later, ██████████ responded to ██████████ by stating:

Hi ██████████. I had asked ██████████ about it and he told me just wait till [sic] April because it didn’t matter at the time and with the government shut down everything was very hectic. So we have just been sitting at idle. We would definitely like to appeal[.]²⁵

██████████ then replied to ██████████ by providing him with a copy of the IAD, and informing him that “[t]he appeal deadline was 30 days from the date of this letter, so the appeal deadline has already passed.”²⁶

¹⁹ *Id.* at p. 3.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Appeal Tab, *Written Petition of Appeal* – ██████████, *Exhibit B*, dated April 28, 2020; received April 29, 2020.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

On May 5, 2020, NAO sent to Appellant a letter acknowledging receipt of his appeal, and requesting Appellant submit any additional material concerning the appeal by May 14, 2020.²⁷ Appellant submitted no additional material. Thereafter, on May 15, 2020, I issued to Appellant a notice scheduling a telephonic hearing for June 1, 2020, at 1:00 p.m. (Eastern).²⁸

On June 1, 2020, Appellant appeared for his scheduled hearing accompanied by his attorney, [REDACTED].²⁹ At his hearing, Appellant testified that he is the owner of [REDACTED], and that [REDACTED] address of record on file with WCRO SFD is [REDACTED].³⁰ Appellant testified that during the vessel account renewal period of October 1 to November 31, 2019, he was living and working in [REDACTED].³¹ Although unable to recall specific dates, Appellant testified that he left [REDACTED] for [REDACTED] sometime in early September 2019, and did not return to [REDACTED] until late March or early April 2020.^{32, 33}

Appellant stated that he did not inform WCRO SFD he would be living in [REDACTED] nor arrange for the USPS to forward his mail to him in [REDACTED] because he was living and working at a remote jobsite where he could not receive mail.^{34, 35} Appellant further testified that nobody was residing at, or regularly visiting the [REDACTED] office while he was working in [REDACTED].³⁶ Appellant did indicate, however, that his bookkeeper would go the office to check the mail if an important letter was going to be delivered.³⁷ Appellant explained that he had registered for the USPS's Informed Delivery service, which provided him and his bookkeeper with digital images of incoming mail prior to the USPS delivering it.^{38, 39}

Appellant recalled that his bookkeeper received an Informed Delivery notification sometime in February 2020 that he would be receiving certified mail from NOAA.⁴⁰ Appellant testified that he then contacted personnel with the NMFS Office of Law Enforcement (OLE), who informed him that OLE had sent him a notice reminding him to submit an economic impact survey.⁴¹

Appellant stated he did not learn that Vessel's account had not been renewed until the week of January 20, 2020, when he attempted to transfer QP he had purchased into the account.⁴² Appellant testified that he spoke to WCRO SFD employee [REDACTED] about his account

²⁷ Appeal Communications Tab, *Acknowledgement Letter*, dated May 5, 2020.

²⁸ Decisions, Orders, Notices Tab, *Notice Scheduling Hearing*, dated May 15, 2020.

²⁹ Audio recording of June 1, 2020, scheduled hearing.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Appellant testified he also made short trips to [REDACTED] to visit [REDACTED] during Christmas 2019, and March 2020. *Id.*

³⁴ *Id.*

³⁵ Appellant stated that from September 2019 through March 2020, he was living and working at [REDACTED]. *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Appellant stated his bookkeeper was the primary recipient of the USPS Informed Delivery notifications. *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

access, at which time Appellant realized he had not renewed Vessel's account.⁴³ Appellant averred he completed a vessel account application the next day and sent it to SFD via overnight delivery.^{44, 45} Appellant indicated ██████████ also informed him during a subsequent conversation that Vessel's account was not eligible to receive 2020 carryover QP because Appellant had not renewed the account during the renewal period of October 1 to November 30, 2019.⁴⁶ Appellant testified that he then asked ██████████ about reinstating Vessel's eligibility for 2020 QP carryover, but ██████████ provided Appellant with no remedy.^{47, 48} Appellant further recalled that ██████████ suggested Appellant speak with WCRO SFD employee ██████████.⁴⁹ Appellant testified he later contacted ██████████ regarding Vessel's eligibility for 2020 QP rollover, which is when he first learned of the IAD and his appeal options.^{50, 51} Appellant stated he first received the IAD on April 1, 2020, when ██████████ emailed him an electronic copy.^{52, 53}

Appellant testified there was ██████████ lb. of QP remaining in Vessel's account at the end of 2019.⁵⁴ Appellant estimated the value of the remaining QP was approximately \$██████████, and insisted the loss of Vessel's eligibility for 2020 carryover would be "financially devastating" to his business.^{55, 56} Appellant also argued that the forfeiture of the ██████████ lb. of QP would violate the Excessive Fines Clause of the U.S. Constitution.^{57, 58}

At the conclusion of the hearing, I informed Appellant that I would be holding the record open until June 8, 2020, during which time he could submit any additional evidence for me to consider. Subsequently, on June 2, 2020, Appellant submitted two documents for evidence, titled "Informed Delivery Daily Digest 2/24/2020," and "Informed Delivery Daily Digest 2/27/2020."⁵⁹ According to Appellant, this evidence "demonstrate[s] the manner in which ██████████ receives notices from USPS pertaining to mail deliveries including the certified documents which were not delivered in ██████████ absence."⁶⁰ Appellant submitted no additional evidence.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Appellant stated his vessel account application is dated January 24, 2020. Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Appellant testified that ██████████ also suggested he not worry about the carryover QP at that time because the rollover would not occur until April 1, 2020.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Appellant could not recall the dates he spoke with ██████████. Id.

⁵² Id.

⁵³ Appellant also claimed he did not receive SFD's September 6, 2019, vessel account renewal reminder. Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Appellant estimated the value of his remaining QP was approximately ██████████ per pound. Id.

⁵⁷ Id.

⁵⁸ Appellant cited U.S. v. Bajakajian, 524 U.S. 321, 118 S. Ct. 2028 (1998) in support of his argument. Id.

⁵⁹ Appeal Communications Tab, *Email from ██████████ to ██████████*, dated June 2, 2020.

⁶⁰ Id.

Having carefully reviewed Appellant's testimony and supporting documents, as well as the information contained in the record, I have determined there is sufficient evidence to adjudicate this appeal. I therefore close the record and render this decision.⁶¹

ISSUES

The overarching legal issue in this case is whether Vessel qualifies for 2020 carryover QP. However, before I can consider the merits of Vessel's eligibility for 2020 carryover QP, I must determine whether Appellant timely appealed the IAD. If Appellant did not file a timely appeal, I am barred from determining Vessel's eligibility for 2020 carryover QP.

If Appellant did file a timely appeal, I must then determine whether Appellant submitted a complete vessel account renewal package no later than November 30, 2019. If Appellant did not submit a complete vessel account renewal package by November 30, 2019, Vessel does not qualify for 2020 carryover QP.

FINDINGS OF FACT

1. On September 6, 2019, WCRO SFD sent to Appellant a reminder that Vessel's account had to be renewed between October 1 and November 30, 2019.⁶²
2. On February 20, 2020, WCRO SFD sent Appellant an IAD informing him of Vessel's ineligibility to receive 2020 carryover QP, and his right to appeal the IAD within 30 days of the date of the IAD.⁶³
3. NAO received Appellant's Written Petition of Appeal on April 29, 2020.⁶⁴

PRINCIPLES OF LAW

The Regulation states that in order for a vessel to take part in NMFS' Shorebased IFQ Program, it "must be registered to an eligible limited entry trawl permit."⁶⁵ Owners of qualifying vessels may request that NMFS establish a vessel account to track QP.⁶⁶ Eligible vessel owners may request NMFS establish a vessel account at any time of year.⁶⁷ Vessel account holders are required to establish online access to their vessel accounts, which NMFS uses to "send messages to vessel owners in the Shorebased IFQ Program."⁶⁸

⁶¹ 15 C.F.R. § 906.11(a)(1) (2014); 15 C.F.R. § 906.12(a) (2014).

⁶² Pre-IAD Communication Tab, *Renewal Reminder – Vessel Account*: [REDACTED], dated September 6, 2019.

⁶³ IAD Tab, *Initial Administrative Determination Notice of Right to Appeal*, dated February 20, 2020.

⁶⁴ Appeal Tab, *Written Petition of Appeal* – [REDACTED], dated April 28, 2020, received April 29, 2020.

⁶⁵ 50 C.F.R. § 660.140(e)(1) (2020).

⁶⁶ *Id.*

⁶⁷ *Id.* at § 660.140(e)(2)(ii).

⁶⁸ *Id.* ("[I]t is important for vessel owners to monitor their online vessel account and all associated messages.").

Vessel account holders must renew their vessel account each calendar between October 1 and November 30.⁶⁹ WCRO SFD sends renewal notifications to vessel account holders' most recent address of record by September 15 each year.⁷⁰ According to the Regulation, vessel account owners are responsible for providing SFD with "notice of any address change within 15 days of the change."⁷¹ "Any vessel account for which SFD does not receive a vessel account renewal request by November 30 will have its vessel account inactivated by NMFS at the end of the calendar year[,] [and] NMFS will not issue QP . . . to the inactivated vessel account."⁷² Any surplus QP or IBQ in the inactivated vessel accounts will not be available for carryover.⁷³

Vessel account owners whose accounts have not been renewed may renew their vessel accounts the following year by submitting "a complete vessel account renewal package."⁷⁴ NMFS will only renew a vessel account if it receives a complete vessel account renewal package, which consists of "payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form . . . , and a complete economic data collection form."⁷⁵

Vessel account owners may appeal SFD's renewal determination by submitting a written appeal "postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD."⁷⁶ IADs not appealed within 30 calendar days, "become[] the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce."⁷⁷

According to NAO's procedural rule, any document sent to NAO will be "considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO."⁷⁸ Persons wishing to file a petition to appeal may not request an extension of time to do so.⁷⁹

ANALYSIS

Did Appellant timely appeal the IAD?

On February 20, 2020, WCRO issued its IAD to Appellant. Per the Regulation, Appellant had 30 days after February 20, 2020, to timely file his appeal.⁸⁰ However, because the 30th day fell on Saturday, March, 21, 2020, the appeal filing deadline was extended to Monday March 23,

⁶⁹ *Id.* at § 660.140(e)(3)(i)(A) ("A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.").

⁷⁰ *Id.* at § 660.140(e)(3)(i)(B).

⁷¹ *Id.*

⁷² *Id.* at § 660.140(e)(3)(i)(C).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at § 660.140(e)(3)(i)(D) ("The vessel account renewal will be considered incomplete until the required information is submitted.").

⁷⁶ *Id.* § 660.140(e)(3)(i)(F); 50 C.F.R. § 660.25(g)(4)(ii) (2019).

⁷⁷ 50 C.F.R. § 660.25(g)(4)(ii) (2019); 50 C.F.R. § 660.25(g)(4)(iii) (2019) ("If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.").

⁷⁸ 15 C.F.R. § 906.4(a)(2) (2014).

⁷⁹ *Id.* at § 906.3(e)(2).

⁸⁰ 50 C.F.R. § 660.25(g)(4)(ii) (2019).

2020.⁸¹ The record, however, establishes that NAO did not receive Appellant’s appeal letter until April 29, 2020; 37 days after the appeal filing deadline.

Appellant argued in his Petition and again at his hearing that he was unable to file a timely appeal because WCRO SFD did not serve him the IAD until after the appeal deadline had passed. Appellant testified during his hearing that the address of record for Appellant’s business, ██████████, is—and was during all relevant periods—██████████, ██████████, but asserted that from early September 2019, until late March or early April 2020, he was living and working in the State of ██████████. Appellant averred that nobody was “frequenting the property” when the IAD “was alleged to have been delivered,”⁸² but testified he did not inform WCRO SFD he would be residing in ██████████. Appellant also testified that he did not arrange for the USPS to forward his mail to him in ██████████ because he was living at a remote jobsite where he could not receive mail.

Appellant also argued that WCRO SFD did not make alternative arrangements for him to receive the IAD despite communicating with members of WCRO SFD at various times in January and February 2020. In fact, Appellant stated that in “late February or early March,” he inquired with NOAA employee ██████████ about appealing SFD’s determination that Vessel was not eligible to receive 2020 QP rollover, but was told by ██████████ that “he could wait until April when things would be less hectic.” To that end, Appellant alleged WCRO SFD did not serve him with the IAD until ██████████ emailed him a copy on April 1, 2020, well after the deadline to file an appeal had passed.

Appellant further argued that losing Vessel’s eligibility for 2020 carryover would be “financially devastating” to his business. According to Appellant’s estimates, there was ██████████ lb. of QP remaining in Vessel’s account at the end of 2019. Appellant assessed the monetary value of this QP at approximately \$██████████.

I recognize the difficult situation in which Appellant finds himself. Nonetheless, I find no merit in Appellant’s arguments. Appellant contends that he was prevented from filing a timely appeal because he did not receive the IAD until April 1, 2020. WCRO SFD’s IAD, however, establishes that SFD mailed the IAD to Appellant’s address of record on or about February 20, 2020. Appellant’s Informed Delivery record from February 24, 2020, further shows that the USPS attempted to deliver the IAD to Appellant’s address of record on February 24, 2020.⁸³

While Appellant appears to argue his intentional absence from ██████████ address of record on February 24, 2020, somehow equates to a failure by SFD to serve him with the IAD, the Regulation clearly states that vessel account owners are responsible for providing SFD with “notice of any address change within 15 days of the change.”⁸⁴ Unfortunately for Appellant, the record contains no evidence that Appellant provided notice of his address change to WCRO SFD within 15 days of his move to ██████████

⁸¹ *Id.* at § 660.25(g)(4)(iii).

⁸² Appellant was unable to recall the date he left for ██████████ or the day he returned to ██████████

⁸³ Appeal Communications Tab, *Email from* ██████████ *to* ██████████, dated June 2, 2020.

⁸⁴ 50 C.F.R. § 660.140(e)(3)(i)(B).

Furthermore, although Appellant maintains he did not arrange to forward his mail to [REDACTED], [REDACTED]—the address Appellant testified he was residing at—because he was unable to receive mail there, USPS.com’s location service indicates that a full-service Post Office is located at [REDACTED], [REDACTED].⁸⁵ This Post Office, located 8.7 miles from [REDACTED], [REDACTED] provides a variety of services, including providing Post Office Boxes that Appellant could have utilized to receive his mail while living and working in [REDACTED], [REDACTED].⁸⁶ The fact Appellant chose not to do so does not alleviate him of his responsibility under the Regulation to ensure his address of record with WCRO SFD is up to date.

Similarly, although Appellant claims [REDACTED] provided him with incorrect information about the appeals process, the Regulation’s requirements concerning addresses of record and the 30-day appeal deadline are clear. Had Appellant followed the Regulation’s requirements regarding his address of record, he would have been advised by the language in the IAD that the deadline to appeal SFD’s determination was March 23, 2020—30 days from February 20, 2020.

Finally, to the extent Appellant argued his untimely appeal should be allowed to proceed because of the financial hardship that losing Vessel’s eligibility for 2020 carryover QP will likely impose on him, the Regulation provides me with no authority to consider an appellant’s financial hardship when determining whether an appeal was timely filed.

Accordingly, for these reasons, I must find Appellant’s Petition was untimely filed.

Did Appellant submit a complete vessel account renewal application package to WCRO SFD by November 30, 2019?

As stated above, Appellant did not file his appeal of the IAD issued to him by WCRO SFD within the 30-day time limit specified in the Regulation.⁸⁷ Consequently, because Appellant failed to timely appeal the IAD, I am barred from considering whether Appellant submitted a complete vessel account renewal package to WCRO SFD by November 30, 2019.⁸⁸

CONCLUSIONS OF LAW

After carefully examining the entire record, I conclude that Appellant has not shown by a preponderance of the evidence that he timely filed his appeal. Therefore, Appellant is not

⁸⁵ The Court takes judicial notice of the location of the [REDACTED] Post Office. See <https://tools.usps.com/find-location.htm>.

⁸⁶ The Court takes judicial notice of distance between [REDACTED], [REDACTED] and [REDACTED] as provided by Google Maps. See [REDACTED]

⁸⁷ See 50 C.F.R. § 660.25(g)(4)(ii)-(iii) (2019).

⁸⁸ *Id.* at § 660.25(g)(4)(ii) (“If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.”).

entitled to a review on the merits of WCRO's determination that Vessel did not qualify for 2020 carryover QP. Accordingly, I must uphold the IAD.

ORDER

The IAD dated February 20, 2020, is **UPHELD**. Appellant may submit a Motion for Reconsideration.⁸⁹ Any Motion for Reconsideration must be postmarked or transmitted by fax to NAO **no later than June 26, 2020**. A Motion for Reconsideration must be in writing and contain a detailed statement of one or more specific material matters of fact or law that the administrative judge overlooked or misunderstood.

[REDACTED]
J. Kirk Essmyer
Administrative Judge

Date Issued: 6.16.2020

⁸⁹ 15 C.F.R. § 906.16 (2014).