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9:00 a.m.–Noon

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RESERVATIONS: (202) 741–6008

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 603, 605, 608, and 611

RIN 3052–AC34

Privacy Act Regulations; Information; Collection of Claims Owed the United States; Organization; Privacy and Security Information; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 603, 605, 608, and 611 on September 20, 2006 (71 FR 54899). This final rule updates and amends the regulations regarding privacy and security information and other matters. This action was taken to correct certain citations in the regulations and to conform the regulations to Executive order 13292. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 23, 2007.

EFFECTIVE DATE: The regulation amending 12 CFR parts 603, 605, 608, and 611, published on September 20, 2006 (71 FR 54899) is effective January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Mike Wilson, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Bob Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: January 23, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–1328 Filed 1–26–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26047; Directorate Identifier 2006–NM–146–AD; Amendment 39–14906; AD 2007–02–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–605R Airplanes and Model A310–308, –324, and –325 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–605R airplanes and Model A310–308, –324, and –325 airplanes. This AD requires modifying the Bruce floor plan electrical emergency path marking system (FPEEPMS) and, for certain airplanes, modifying the automatic switching of the emergency lighting system. This AD results from a report that in the case of vertical separation of the fuselage forward of door 1, the FPEEPMS and the exit signs do not turn on. We are issuing this AD to prevent inadequate lighting and marking of the escape path, which could delay or impede the flightcrew and passengers when exiting the airplane during an emergency landing.

DATES: This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B4–605R airplanes and Model A310–308, –324, and –325 airplanes. That NPRM was published in the **Federal Register** on October 12, 2006 (71 FR 60089). That NPRM proposed to require modifying the Bruce floor plan electrical emergency path marking system (FPEEPMS) and, for certain airplanes, modifying the automatic switching of the emergency lighting system.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a

mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in the DMS.

We understand MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Request To Add FAA Intent To Incorporate Certain Service Bulletins by Reference in the NPRM

MARPA requests that, during the NPRM stage of AD rulemaking, the FAA state its intent to incorporate by reference (IBR) any relevant service information. MARPA states that without such a statement in the NPRM, it is unclear whether the relevant service information will be incorporated by reference in the final rule.

The FAA does not concur with the commenter's request. When we reference certain service information in a proposed AD, the public can assume we intend to IBR that service information, as required by the Office of the **Federal Register**. No change to this final rule is necessary in regard to the commenter's request.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for the U.S. operator to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification of FPEEPMS	Between 44 and 47.	$80	Between $2,570 and $2,690.	Between $6,090 and $6,450.	1	Between $6,090 and $6,450.
Modification of automatic switching.	14	80	Between $534 and $727.	Between $1,654 and $1,847.	1	Between $1,654 and $1,847.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–02–19 Airbus: Amendment 39–14906. Docket No. FAA–2006–26047; Directorate Identifier 2006–NM–146–AD.

Effective Date

(a) This AD becomes effective March 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–605R airplanes and Model A310–308, –324, and –325 airplanes, certificated in any category; on which Airbus Modification 06810 or 06934 (Bruce floor proximity emergency escape path marking system (FPEEPMS)) has been installed in production; or on which Airbus Service Bulletin A300–33–6047 or A310–33–2045, both dated March 5, 2004, has been done.

Unsafe Condition

(d) This AD results from a report that in the case of vertical separation of the fuselage forward of door 1, the FPEEPMS and the exit signs do not turn on. We are issuing this AD to prevent inadequate lighting and marking of the escape path, which could delay or impede the flightcrew and passengers when exiting the airplane during an emergency landing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 16 months after the effective date of this AD, modify the Bruce FPEEPMS in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–33–6047, Revision 01, dated January 20, 2006 (for Model A300 B4–605R airplanes); or Airbus Service Bulletin A310–33–2045, Revision 01, dated January 20, 2006 (for Model A310–308, –324, and –325 airplanes); as applicable.

(g) For Model A310–308, –324, and –325 airplanes: Prior to or concurrently with the modification required in paragraph (f) of this AD, modify the automatic switching of the emergency lighting system in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–33–2025, Revision 01, dated April 17, 2001.

Modifications Accomplished According to Previous Issue of Service Bulletin

(h) Modifications accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–33–2025, dated March 1, 1993, are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) EASA airworthiness directive 2006–0077, dated April 3, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the applicable service bulletin identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–33–6047	01	January 20, 2006.
A310–33–2025	01	April 17, 2001.
A310–33–2045	01	January 20, 2006.

Issued in Renton, Washington, on January 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1198 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–AD; Amendment 39–14883; AD 2007–01–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. That AD currently requires modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges if necessary. This new AD requires using revised procedures for modifying and inspecting the flight compartment door and reduces the applicability of the existing AD. This AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are issuing this AD to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

DATES: This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2007.

On May 12, 1999 (64 FR 16803, April 7, 1999), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin S.B. 8–52–39, Revision 'C,' dated September 1, 1997; and Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 99–08–04, amendment 39–11109 (64 FR 16803, April 7, 1999). The existing AD applies to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. That NPRM was published in the **Federal Register** on September 26, 2006 (71 FR 56070). That NPRM proposed to continue to require modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges if necessary. That NPRM also proposed to require using revised procedures for modifying and inspecting the flight compartment door and to reduce the applicability of the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Publish Service Information/Incorporate by Reference in NPRM

The Modification and Replacement Parts Association (MARPA) states that ADs are based on service information that originates from the type certificate holder or its suppliers. MARPA adds that manufacturer's service documents are privately authored instruments, generally having copyright protection against duplication and distribution. When a service document is incorporated by reference into a public document, such as an AD, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that if a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated by reference. MARPA believes that public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA adds that the legal interpretation of a document is a question of law, not of fact; therefore, unless the service document is incorporated by reference, it cannot be considered. MARPA is concerned that failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA points out that in another AD issued from a Directorate other than the Transport Airplane Directorate, the FAA advised that documents are not incorporated by reference into proposed actions; only in final actions. MARPA can point to hundreds, if not thousands, of final rules where the documents were not incorporated by reference-either intentionally or by oversight. MARPA can also provide hundreds of references where the incorporation by reference text has been included in the proposed rule; thus there does not seem to be a consistent policy from action to action and across all Directorates on how to handle this issue.

MARPA also states that service documents incorporated by reference should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates those documents. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service

information by the manufacturer. MARPA adds that, a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

In conclusion, MARPA notes that ''looking at'' a policy or procedure is not exactly the same as implementing it. Therefore, MARPA will continue to comment and request until such time as a decision has been implemented.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the actions required by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Clarification of Paragraph (h) of This AD

We have changed paragraph (h) of this AD to clarify that the modification required by paragraph (f) of this AD is included in the inspection requirements in paragraph (h).

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 167 airplanes of U.S. registry. The new actions of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

The modification takes about 4 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the modification is $53,440, or $320 per airplane.

The inspection takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection is $26,720, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11109 (64 FR 16803, April 7, 1999) and by adding the following new airworthiness directive (AD):

2007–01–11 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14883. Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–AD.

Effective Date

(a) This AD becomes effective March 5, 2007.

Affected ADs

(b) This AD supersedes AD 99–08–04.

Applicability

(c) This AD applies to Bombardier Model DHC–8–100, –200 and –300 series airplanes, certificated in any category; equipped with a flight compartment door installation having part number (P/N) 82510074–(*), 82510294–(*), 82510310–001, 8Z4597–001, H85250010–(*), 82510700–(*), or 82510704–(*); except P/Ns 82510704–502 and 82510704–503.

Note 1: (*) denotes all dash numbers.

Unsafe Condition

(d) This AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are issuing this AD to prevent failure of the

alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of Ad 99–08–04 With Revised Procedures

Modification

(f) Except as required by paragraph (g) of this AD: Within 90 days after May 12, 1999 (the effective date of AD 99–08–04), modify the lower hinge assembly and main door latch (Modification 8/2337) of the flight compartment door, in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998; or Revision 'H,' dated September 9, 2004. After the effective date of this AD, only Revision 'H' may be used for accomplishing the modification.

(g) For airplanes on which the modification required by paragraph (f) of this AD was done before the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–52–39, dated August 30, 1996; or Revision 'A,' dated October 31, 1996: Within 90 days after the effective date of this AD, do the modification required by paragraph (f) of this AD in accordance with Bombardier Service Bulletin 8–52–39, Revision 'H,' dated September 9, 2004.

Inspection

(h) Within 800 flight hours after doing the modification required by paragraph (f) or (g) of this AD, as applicable: Inspect the hinge areas around the hinge pin holes of the flight compartment door for wear in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998; or Revision 'H,' dated September 9, 2004. After the effective date of this AD, only Revision 'H' may be used for accomplishing the inspection.

(1) If no wear is detected, or if the wear is less than or equal to 0.020 inch in depth, repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(2) If any wear is detected and its dimension around the hinge pin holes is less than 0.050 inch and greater than 0.020 inch in depth, prior to further flight, perform the applicable corrective actions specified in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(3) If any wear is detected and its dimension around the hinge pin holes is greater than or equal to 0.050 inch in depth, prior to further flight, replace the worn hinges with new hinges in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

Credit for Actions Accomplished Previously

(i) Modifications and inspections done before the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'B,' dated July 4, 1997; Revision 'C,' dated August 1, 1997; Revision 'E,' dated May 10, 1999; Revision 'F,' dated February 4, 2000; or Revision 'G,' dated May 17, 2001; are considered acceptable for compliance with the modification and inspections required by this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 99–08–04 are approved as AMOCs for the corresponding provisions of paragraphs (f), (g), (h), and (i) of this AD.

(3) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–1996–20R4, dated August 10, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998; and Bombardier Service Bulletin 8–52–39, Revision 'H,' dated September 9, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 8–52–39, Revision 'H,' dated September 9, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 12, 1999 (64 FR 16803, April 7, 1999), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998.

(3) Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1200 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25205; Directorate Identifier 2006–NM–071–AD; Amendment 39–14905; AD 2007–02–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires an inspection of visually accessible areas for indications of overheating of the heater tape attached to the potable water fill and drain lines in the forward and aft cargo compartments, exposed foam insulation or missing or damaged protective tape around the potable water fill and drain lines, and debris or contaminants on or near the potable water fill and drain lines. That AD also requires corrective action, as necessary. This new AD requires repetitive inspections of the forward and aft cargo compartments, as applicable, for discrepancies of the potable water supply and gray water drain lines; and applicable corrective actions if necessary. This AD also requires replacing the heater tapes on the potable water supply and gray water drain lines of the forward and aft cargo compartments, as applicable, with new ribbon heaters, or deactivating and removing any defective heater tape and wrapping the drain line with foam insulation; either action ends the repetitive inspections. This AD results from a report of a fire in the aft cargo compartment. We are issuing this AD to prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane.

DATES: This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket

Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Donald Eiford, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002–11–11, amendment 39–12772 (67 FR 39265, June 7, 2002). The existing AD applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on June 30, 2006 (71 FR 37507). That NPRM proposed to require repetitive inspections of the forward and aft cargo compartments, as applicable, for discrepancies of the potable water supply and gray water drain lines; and applicable corrective actions if necessary. That NPRM also proposed to require replacing the heater tapes on the potable water supply and gray water drain lines of the forward and aft cargo compartments, as applicable, with new ribbon heaters, which would end the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Permit Alternative Method of Compliance

Boeing requests that we permit an alternative method of compliance for the terminating action described in the NPRM. Boeing states that Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006, describes procedures for deactivating and removing the heater tapes of certain gray water drain lines and wrapping the drain lines with foam insulation. Boeing therefore requests that we revise the summary and paragraph (h), Terminating Action, of the NPRM to state that the alternative action described here is acceptable as a terminating action for the requirements of the AD.

We agree for the reasons stated. Accordingly, we have revised the summary of the AD, revised paragraph (h) of the AD to include new paragraphs (h)(1) and (h)(2), and removed paragraph identifiers (1) and (2) from Table 2 of the AD. We have also revised the Costs of Compliance section of the AD to present the estimated costs for deactivation and removal of the heating tapes and installation of foam insulation. These actions neither increase the economic burden on any operator nor increase the scope of the AD.

Request To Clarify Costs of Compliance

Boeing requests that we clarify the Costs of Compliance section of the NPRM. Boeing states that the Estimated Costs table is not clear and asserts that the time estimated for performing the inspections should be ''2 or 3'' work hours. Boeing further asserts that Boeing Service Bulletin 767–30A0038 specifies ''between 4.75 and 11 work hours'' to perform the heater tape replacements. Although Boeing made no specific request, we infer that Boeing wishes us to revise the Costs of Compliance section to more closely reflect the estimated costs specified in the service bulletin.

We partially agree. We concur that the time estimated for performing the inspections should be 2 or 3 work hours, as shown in the Estimated Costs table. However, the statement that ''between 4.75 and 11 work hours'' are required to replace the heater tapes does not accurately reflect the service information we have reviewed. The service bulletin provides an estimate of between 4.75 and 11 work hours to gain access, perform inspections, replacements and tests, and close access. Typically, the costs specified in an AD are only the direct costs of the specific actions required by the AD. Therefore, the figures shown in the Estimated Costs table of this AD do not include the time to gain and close access or perform testing. Further, the remaining work hours specified to do the direct actions are divided into two parts: one part to perform the inspections and one part to replace the ribbon heater or to remove the heater and install foam insulation. We have made no changes to the AD in regard to these comments.

Comment Regarding Applicability

A private citizen states that the NPRM does not apply to Model 767 freighter airplanes.

We agree. The AD does not apply to Model 767–300F or –400ER series airplanes (freighters), but only to Model 767–200 and –300 series airplanes, as stated in the NPRM. No change is needed to the AD in this regard.

Request for Posting of Service Information

The Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA states that, as an AD is a public regulatory instrument, it can not rely upon private writings. MARPA asserts that such IBR documents lose any proprietary, protected status they originally had and become public documents and, therefore, that they must be published in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA addresses the stated purpose of the **Federal Register** IBR method, brevity, which is intended to relieve the **Federal Register** of needlessly publishing documents already supplied to affected individuals: owners and operators of affected aircraft. MARPA asserts that ''affected individuals'' are no longer merely owners and operators, but, since most aircraft maintenance is now performed by specialty shops, that a new class of affected individuals has emerged. This new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under 14 CFR 21.303 (PMA). Further, MARPA contends that the concept of brevity is now nearly archaic as most documents are kept in electronic files. MARPA therefore requests that IBR documents be incorporated by reference into the regulatory instrument and posted in the DMS docket for the applicable AD.

We acknowledge MARPA's comments. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document

necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service documents on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service documents on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Request for Standardized Directorate Policies

MARPA requests standardized directorate policies, asserting that another directorate has already given a blanket parts manufacturer approval (PMA) by stating in published rules that ''FAA-approved equivalent parts'' may be used. MARPA contends that, by not using similar language, we are not in compliance with Executive Order 12866 or proposed FAA order 8040.2. MARPA asserts that for us to not include similar blanket language at the earliest possible time could work to our disadvantage legally.

We recognize the need for standardization on this issue and currently are in the process of reviewing issues that address PMAs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 455 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours [1]	Average labor rate per hour	Parts	Cost per airplane [1]	Number of U.S.-registered airplanes	Fleet cost [2]
Inspections	2 or 3	$80	None	$160 or $240, per inspection cycle.	83	Between $13,280 and $19,920, per inspection cycle.
Deactivation/installation of insulation.	1	80	None	$80	Up to 83	Up to $6,640.
Replacement	Between 1 and 3.	80	$8,000	Between $8,080 and $8,240	83	Up to $683,920.

[1] Depending on airplane configuration.
[2] Depending on fleet configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12772 (67 FR 39265, June 7, 2002) and by adding

the following new airworthiness directive (AD):

2007–02–18 Boeing: Amendment 39–14905. Docket No. FAA–2006–25205; Directorate Identifier 2006–NM–071–AD.

Effective Date

(a) This AD becomes effective March 5, 2007.

Affected ADs

(b) This AD supersedes AD 2002–11–11.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006.

Note 1: For the purposes of this AD: An open cargo floor configuration, as identified in Boeing Service Bulletin 767–30A0038, is a floor without panels installed between all roller trays in the cargo compartment. A closed cargo floor configuration, as identified in Boeing Service Bulletin 767–30A0038, is a floor with panels installed between all roller trays in the cargo compartment.

Unsafe Condition

(d) This AD results from a report of a fire in the aft cargo compartment. We are issuing this AD to prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections

(f) Within 18 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever is later: Do the actions in Table 1 of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006.

TABLE 1.—INSPECTIONS

Do a general visual inspection of the forward and aft cargo compartments, as applicable, for—	And, repeat at intervals not to exceed—	Until the requirements of—
(1) Foreign object debris (FOD) or contamination on, near, or around the potable water supply and gray water drain lines.	600 flight hours	Paragraph (h)(1) or (h)(2) of this AD are done.
(2) Indications of heat damage, exposed foam insulation, or missing or damaged protective tape of all heater tape on the potable water supply and gray water drain lines.	1,800 flight hours	Paragraph (h)(1) or (h)(2) of this AD are done.

Corrective Actions

(g) If any discrepancy identified in Table 1 of this AD is found during any general visual inspection required by either paragraph (f)(1) or (f)(2) of this AD, before further flight, do the applicable corrective action by accomplishing all the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006.

Terminating Action

(h) At the applicable compliance time specified in Table 2 of this AD: Perform the actions required by paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006. Accomplishing the requirements of paragraph (h)(1) or (h)(2) of this AD ends the requirements of paragraph (f) of this AD.

(1) Replace the heater tapes on the potable water supply and gray water drain lines of the forward and aft cargo compartments, as applicable, with Adel Wiggins ribbon heaters.

(2) Deactivate and remove any defective heater tape(s) from the potable water supply and gray water drain line(s) of the forward and aft cargo compartments and wrap the drain line(s) with foam insulation.

TABLE 2.—COMPLIANCE TIME FOR TERMINATING ACTION

For airplanes on which the heater tape—	The compliance time is—
Has not been replaced in accordance with Boeing Alert Service Bulletin 767–30A0037, dated May 28, 2002; or Boeing Service Bulletin 767–30A0037, Revision 1, dated July 19, 2002; as of the effective date of this AD.	Within 42 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24 months after the effective date of this AD, whichever occurs later.
Has been replaced in accordance with Boeing Alert Service Bulletin 767–30A0037, dated May 28, 2002; or Boeing Service Bulletin 767–30A0037, Revision 1, dated July 19, 2002; as of the effective date of this AD.	Within 42 months after replacing the heater tape, or within 24 months after the effective date of this AD, whichever occurs later.

Credit for Earlier Revisions of Service Bulletin

(i) For airplanes having variable number (VN) VN471 and VN472: Actions done in the forward cargo compartment before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–30A0038, dated December 16, 2004; or Boeing Service Bulletin 767–30A0038, Revision 1, dated September 29, 2005; are acceptable for compliance with the corresponding requirements of this AD for the forward cargo compartment only.

(j) For airplanes having VN VS704 through VS707 inclusive: Actions done in the forward cargo compartment before the effective date of this AD in accordance with Boeing Service Bulletin 767–30A0038, Revision 1, dated September 29, 2005, are acceptable for compliance with the corresponding requirements of this AD for the forward cargo compartment only.

(k) For airplanes other than those identified in paragraphs (i) and (j) of this AD: Actions done in the forward and aft cargo compartments, as applicable, before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–30A0038, dated December 16, 2004; or Boeing Service Bulletin 767–30A0038, Revision 1, dated September 29, 2005; are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 767–30A0038, Revision 2, dated February 23, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1211 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24410; Directorate Identifier 2005–NM–261–AD; Amendment 39–14911; AD 2007–02–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This AD requires repetitive inspections for cracking of the web of the station (STA) 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring; and repair if necessary. This AD also requires a modification, which terminates the repetitive inspections. This AD results from analysis by the manufacturer that the radial lap splices of the STA 2360 aft pressure bulkhead are subject to widespread fatigue damage. We are issuing this AD to detect and correct cracking of the bulkhead web at multiple sites along the radial lap splice, which could join together to form cracks of critical length, and result in rapid decompression and loss of control of the airplane.

DATES: This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on April 11, 2006 (71 FR 18242). That NPRM proposed to require repetitive inspections for cracking of the web of the station (STA) 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring; and repair if necessary. That NPRM also proposed to require a modification, which would terminate the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Boeing supports the NPRM as written.

Request To Postpone the AD

Japan Airlines (JAL) states that Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005 (which we referred to in the NPRM as the appropriate source of service information for accomplishing the required actions), does not contain information for inspecting areas where a repair doubler has already been installed. JAL asks that we postpone issuing the AD until an inspection method for the repaired area is incorporated into the service bulletin.

We disagree with the request to postpone the AD. The condition requiring repairs may be unique on each airplane. Therefore, approval of instructions for inspecting areas where a repair doubler has been installed may be obtained using a method approved in accordance with the procedures specified in paragraph (i) of this AD. As an unsafe condition has been identified, it is not appropriate to delay issuing this AD for this reason. We have not changed the AD in this regard.

Request To Add a Grace Period for Modification

JAL also requests that we add an additional grace period to paragraph (h) of the NPRM by adding the words ''or 18 months after the issue of the modification service bulletin.'' (The compliance time specified in that paragraph would then read: ''Before the airplane accumulates 35,000 total flight cycles or within 18 months after the effective date of this AD or within 18 months after the issue of the modification service bulletin, whichever occurs later.'') The commenter states that the modification method is not yet available to operators.

We disagree with the request to add an additional grace period. We have identified an unsafe condition that is associated with widespread fatigue damage (WFD). A modification within the compliance times specified in paragraph (h) of this AD is necessary for the continued airworthiness of the airplane beyond 35,000 total flight cycles, and it is not appropriate to delay issuing this AD for these airplanes. Repetitive inspections alone will not ensure an acceptable level of safety for airplanes beyond 35,000 total flight cycles, considering the failure

mechanism of WFD. In developing an appropriate compliance time, we considered these safety implications. In light of these items, we have determined that the grace period as written is appropriate. We have not changed the AD in this regard.

Request To Clarify Paragraph (f) Regarding Inspection of Radial Web Lap Joints

The Air Transport Association (ATA), on behalf of one of its members, Northwest Airlines, requests that we clarify paragraph (f) of the AD to specify that the radial web lap joints in areas common to the Y-ring outer chord are not included in the inspection area. Northwest Airlines explains that the non-destructive testing manual, referred to in Figure 1 of Boeing Alert Service Bulletin 747–53A2561, does not include an inspection of these areas.

We agree with the request to clarify paragraph (f) of the AD. The surface high frequency eddy current (HFEC) inspection from the aft side of the bulkhead was not developed to detect cracks in the radial web lap joints in the area common to the Y-ring outer chord, which is on the aft side of the body station (BS) 2360 pressure bulkhead. Therefore, we have revised paragraph (f) of the AD to state that it is not necessary to inspect the web lap joints in the areas common to the Y-ring outer chord.

Request To Specify Alternative Method of Compliance (AMOC)

ATA, on behalf of one of its members, Northwest Airlines, states that the inspection in accordance with this AD should not be required in areas where production doublers and non-production doublers installed or inspected in accordance with Boeing Alert Service Bulletins 747–53A2275 and/or 747–53A2482 cover the affected radial web lap joints. Northwest Airlines therefore requests that the inspections and corrective actions in accordance with Boeing Alert Service Bulletin 747–53A2275 (as mandated by AD 2000–15–08, amendment 39–11840 (65 FR 47255, August 2, 2000), and AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990), be specified as AMOCs to the requirements of this AD. AD 2000–15–08 refers to various revisions of Boeing Alert Service Bulletin 747–53A2275. AD 2004–16–09, amendment 39–13765 (69 FR 48133, August 9, 2004), refers to Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002. AD 90–06–06, refers to Boeing document D6–35999, which refers to Boeing Alert Service Bulletin 747–53–2272, Revision 2, dated May 14, 1987, as a source of service information.

We partially agree with the commenters. We agree that the inspections or modifications done in accordance with Boeing Alert Service Bulletins 747–53A2275 and 747–53A2482 may be acceptable as AMOCs for the inspections required by this AD. Those inspections or modifications mitigate unsafe conditions that are similar to those identified in this AD. We do not agree with specifying the inspections and corrective actions in accordance with those service bulletins as AMOCs for this AD. In this case, AMOCs must be substantiated and approved on a case-by-case basis in accordance with the procedures specified in paragraph (i) of this AD. We have not changed the AD in this regard.

Clarification of Terminating Modification

We have added a note after paragraph (h) of the AD to state that as of the effective date of this AD, the manufacturer has not informed us of any intent to produce the required terminating modification; however, the regulations do not prevent others from doing so.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 949 airplanes of the affected design in the worldwide fleet. This AD affects about 153 airplanes of U.S. registry. The inspections take about 11 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $134,640, or $880 per airplane, per inspection cycle.

Because the manufacturer has not yet developed a modification that matches the actions specified by this AD, we cannot provide specific information regarding the required number of work hours or the cost of parts to do the required modification. In addition, modification costs will likely vary depending on the operator and the airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

2007–02–24 Boeing: Amendment 39–14911. Docket No. FAA–2006–24410; Directorate Identifier 2005–NM–261–AD.

Effective Date

(a) This AD becomes effective March 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from analysis by the manufacturer that the radial lap splices of the station (STA) 2360 aft pressure bulkhead are subject to widespread fatigue damage. We are issuing this AD to detect and correct cracking of the bulkhead web at multiple sites along the radial lap splice, which could join together to form cracks of critical length, and result in rapid decompression and loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections

(f) Before the airplane accumulates 28,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later: Do a high-frequency eddy current inspection for cracking of the web of the STA 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring; in accordance with Part 2, ''Access and Inspection,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005. It is not necessary to inspect the web lap joints in the areas common to the Y-ring outer chord. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification in paragraph (h) of this AD is done.

Repair

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, do the applicable action in paragraph (g)(1) or (g)(2) of this AD.

(1) If the cracking is within certain limits specified in Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005 (referencing the structural repair manual), do the repair in accordance with the Accomplishment Instructions of the alert service bulletin.

(2) If the cracking is more than certain limits specified in Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005, or if the alert service bulletin specifies to ask Boeing for repair data: Repair the cracking using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Modification

(h) Before the airplane accumulates 35,000 total flight cycles or within 18 months after the effective date of this AD, whichever occurs later: Modify the aft pressure bulkhead using a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD. Doing this modification terminates the repetitive inspection requirements of paragraph (f) of this AD.

Note 1: As of the effective date of this AD, the manufacturer has not informed us of any intent to produce the required terminating modification; however, the regulations do not prevent others from doing so.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at http://dms.dot.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on January 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1212 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD; Amendment 39–14913; AD 2007–03–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines, with certain low pressure (LP) compressor modules installed. This AD requires an ultrasonic inspection (UI) of LP compressor fan blades for cracks, within 30 days after the effective date of the AD on certain serial number (SN) Tay 650–15 engines. This AD also requires initial and repetitive UIs of LP compressor fan blades on all engines. This AD also requires, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine. This AD results from a report that a set of LP compressor fan blades failed before reaching the LP compressor fan blade full published life limit. We are issuing this AD to prevent LP compressor fan blades from failing due to blade root cracks, leading to uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective March 5, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 5, 2007.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England

Executive Park, Burlington, MA 01803; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines, with certain low pressure (LP) compressor modules installed. We published the proposed AD in the **Federal Register** on June 27, 2006 (71 FR 36493). That action proposed to require a UI of LP compressor fan blades for cracks, within 30 days after the effective date of the AD on certain serial number (SN) Tay 650–15 engines. That action also proposed to require repetitive UIs of LP compressor fan blades on all engines. That action also proposed to require, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

RRD Request To Change Compliance Paragraphs (h)(1) and (h)(2)

RRD requests that we change the compliance schedule for Tay 650–15 and Tay 651–54 engines in proposed AD paragraph (h)(1), from ''at every shop visit for any reason or before reaching every 4,000 flight hours-since-last fan blade UI, whichever occurs first'' to ''at every engine shop visit for any reason or before reaching every 10,000 flight hours-since-last fan blade UI, whichever occurs first.''

RRD also requests that we change the compliance schedule for Tay 620–15 engines in proposed AD paragraph (h)(2) from ''before reaching every 8,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first'' to ''before reaching every 10,000 flight hours for airline operation, and before reaching 8,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first, for non-airline operation.'' RRD bases these changes on their Engine Management Program.

We agree with the intent of the requested changes to proposed AD paragraph (h)(1). We changed that paragraph, and added subparagraphs to clarify the initial inspection requirements in the AD. Regarding paragraph (h)(2), we do not agree with having different inspection schedules for airline and non-airline operations. However, we changed paragraph (h)(2) to paragraph (h)(2)(iii), to read ''before reaching every 10,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first''. We feel that this drawdown schedule will take care of both low- and high-utilization of Tay 620–15 engines.

Air Transport Association Request To Change Compliance Paragraph (h)(1)

Air Transport Association (ATA) requests that we change the compliance schedule in paragraph (h)(1) from ''at every engine shop visit for any reason or before reaching every 4,000 flight hours-since-last fan blade UI, whichever occurs first'' to ''at every engine shop visit for any reason or before reaching every 12 years or 15,000 flight hours-since-last fan blade UI, whichever occurs first''. ATA states that this schedule is described in the Engine Management Program for Tay 651–54 engines installed in the Boeing 727 airplanes. We do not agree. The intent of proposed AD paragraph (h)(1) is to UI Tay 650–15 and Tay 651–54 engines at all scheduled and unscheduled shop visits, using RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003. Also, the intent of the paragraph is to parallel the SB requirement of an initial UI within 3 months after the SB issue date. We did change paragraph (h) and added subparagraphs as described under the first comment above.

Request To Change Compliance Paragraph (h)(3)

One commenter requests that we change the Tay 611–8 compliance schedule in proposed AD paragraph (h)(3). The commenter requests that we call out an initial UI inspection to be done at the next engine mid-life or overhaul inspection after the effective date of this AD. The commenter also requests that we call out repetitive UI inspections to be done before reaching every 8,000 flight hours but no later than every 10 years since-last-fan blade UI, whichever occurs first. These changes would prevent many airplanes from being immediately grounded, upon issuance of the AD. We agree with the commenter's intent. We changed and added paragraphs (h) through (h)(2)(iii) to clarify the initial inspection requirements in the AD, and to incorporate the compliance schedule changes.

Request To Add LP Compressor Fan Blade Part Numbers

ATA requests that we include LP compressor fan blade part numbers in the AD. We agree and added the part numbers to the AD.

Incorrect Supplemental Type Certificate (STC) Number

In paragraph (c) of the proposed AD, STC number SA842SW is incorrect. That STC applies to a Cessna Model 414 airplane. We corrected the STC No. in paragraph (c) of this AD to SA8472SW, which applies to a Boeing 727 airplane.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect about 1,000 RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per engine to perform an inspection, and that the average labor rate is $80 per work-hour. Required parts will cost about $95,000 per LP compressor fan disk and $140,000 per set of LP compressor fan blades. We estimate that 5 percent or 50 engines will require replacing the LP compressor fan disc and LP compressor fan blade set. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $11,750,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2007–03–02 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–14913. Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8 and Tay 620–15 turbofan engines with low pressure (LP) compressor module part number (P/N) MO1100AA or P/N MO1100AB installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module P/N MO1300AA or P/N MO1300AB installed. These engines are installed on, but not limited to, Fokker F.28 Mark 0070 and 0100 airplanes, Boeing 727 airplanes modified in accordance with Supplemental Type Certificate No. SA8472SW, and Gulfstream G–IV airplanes. The following P/N LP compressor fan blades are installed in these modules:

Tay 611–8 LP compressor fan blade P/Ns	Tay 620–15 LP compressor fan blade P/Ns	Tay 650–15 LP compressor fan blade P/Ns	Tay 651–54 LP compressor fan blade P/Ns
JR30649	JR30649	JR31911	JR31911.
JR31702	JR31702	JR31912	JR31912.
JR31983	JR31983	JR35120	JR35120.
	JR33863	JR35121	JR35121.
	JR33864	JR33865.	
		JR33866.	

Unsafe Condition

(d) This AD results from a report that a set of LP compressor fan blades failed before reaching the LP compressor fan blade full published life limit. We are issuing this AD to prevent LP compressor fan blades from failing due to blade root cracks, leading to uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Ultrasonic Inspection (UI) of LP Compressor Fan Blades for Certain Tay 650–15 Engines That Have Not Yet Had UI of the LP Compressor Fan Blades

(f) For Tay 650–15 engines, serial numbers 17201, 17202, 17226, 17253, 17341, 17356, 17428, 17450, 17457, 17458, 17497, 17530, 17622, 17643, 17655, 17678, 17709, 17751, 17755, 17805, and 17806 that have not yet had UI of the LP compressor fan blades:

(1) Within 30 days after the effective date of this AD, perform UI of the LP compressor fan blades for cracks.

(2) Use Part 1 of RRD Service Bulletin (SB) No. TAY–72–1591, dated May 8, 2003, to do the inspection.

UI of LP Compressor Fan Blades Being Installed in a Different Engine; Tay 650–15 and Tay 651–54 Engines

(g) For Tay 650–15 and Tay 651–54 engines, whenever LP compressor fan blades are removed and are being installed in a different engine:

(1) Perform UI of the LP compressor fan blades for cracks.

(2) Use Part 1 of RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003, to do the inspection.

UI of LP Compressor Fan Blades for All Tay Engines

(h) Perform UI of the LP compressor fan blades for cracks, using Part 2 of RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003, at the following:

(1) For Tay 650–15 and Tay 651–54 engines:

(i) Initial UI at next shop visit for any reason but no later than 6 months after the effective date of this AD, whichever occurs first.

(ii) Repetitive UIs at every engine shop visit for any reason but before reaching every 10,000 flight hours-since-last fan blade UI, whichever occurs first.

(2) For Tay 611–8 and Tay 620–15 engines:

(i) Initial UI at next shop visit for engine mid-life inspection or overhaul, but no later than 12 months after the effective date of this AD, whichever occurs first.

(ii) For Tay 611–8 engines, repetitive UIs before reaching every 8,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first.

(iii) For Tay 620–15 engines, repetitive UIs before reaching every 10,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first.

LP Compressor Fan Blades That Are Cracked

(i) If any LP compressor fan blade is cracked, then remove the complete LP compressor fan blade set and the LP compressor fan disc from service.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Luftfahrt-Bundesamt airworthiness directive D–1998–055R3, dated December 15, 2003, which was approved by EASA under approval No. 1869 on December 15, 2003, also addresses the subject of this AD.

(l) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747, fax (781) 238–7199; e-mail: *jason.yang@faa.gov* for more information about this AD.

Material Incorporated by Reference

(m) You must use the Rolls-Royce Deutschland Ltd & Co KG service information specified in Table 1 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356 for a copy of this service information. You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
TAY–72–1591, Total Pages: 8	All	Original	May 8, 2003.
TAY–72–1442, Total Pages: 11	All	3	November 26, 2003.
Appendix 1 of TAY–72–1442, Total Pages: 4	All	3	November 26, 2003.

Issued in Burlington, Massachusetts, on January 22, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–1218 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25642; Directorate Identifier 2006–NM–121–AD; Amendment 39–14912; AD 2007–03–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This AD requires inspecting certain power feeder wire bundles for damage, inspecting the support clamps for these wire bundles to determine whether the clamps are properly installed, and performing corrective actions if necessary. This AD results from a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. We are issuing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

DATES: This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757 airplanes. That NPRM was published in the **Federal Register** on August 21, 2006 (71 FR 48493). That NPRM proposed to require inspecting certain power feeder wire bundles for damage, inspecting the support clamps for these wire bundles to determine whether the clamps are properly installed, and performing corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify Scope of Service Information

Northwest Airlines (NWA) states that the service bulletins referred to in the NPRM indicate that Boeing technical publication revisions are not required to support the referenced modification. NWA adds that, typically, wire bundle installations are not detailed in Boeing technical publications; wire bundles are installed and maintained in accordance with the Boeing standard wiring practices manual (SWPM). NWA notes that the addition of spacers and rivets to wire bundle support brackets is not supported by Boeing technical publications. NWA adds that this burdens operators with the cost of developing their own system of maintaining the required configuration for continued compliance with the AD.

We infer that the commenter is asking for clarification of the scope of the referenced service information regarding related technical publications. Regarding the comment on adding spacers and rivets, the spacers should already have been installed, and the purpose of the rivets is to ensure that

the clamp cannot be bolted into the incorrect hole; the rivets and spacers are not used to support the wire bundle bracket. After the rivets and spacers are installed there should be no further maintenance necessary; therefore, compliance with the actions specified in the service information meets the requirements of this AD. We have not changed the AD in this regard.

Request To Use Minimum Equipment List (MEL) in Lieu of Repair

NWA asks that paragraph (g) of the NPRM be changed to allow flight using the MEL of the system rather than require repair prior to further flight. NWA states that the compliance time specified in paragraph (g) of the NPRM, and the referenced service bulletins, requires that the wire bundles be repaired as necessary per Boeing SWPM, Chapter 20–10–13, before further flight. NWA adds that the integrated drive generator (IDG) MEL and deviation dispatch guide (DDG), which disconnects the IDG, could be safely applied if the conditions found required significant repairs. NWA notes that operators could use the limited MEL time for repair planning and scheduling.

We do not agree with the commenter. Disabling an essential system and then dispatching under the MEL is not an acceptable alternative method of compliance. The MEL is provided for unexpected failures of systems, and is not a substitute for proper planning to ensure timely compliance with ADs.

Request To Publish Service Information/Incorporate by Reference in NPRM

The Modification and Replacement Parts Association (MARPA) states that ADs are based on service information that originates from the type certificate holder or its suppliers. MARPA adds that manufacturer's service documents are privately authored instruments, generally having copyright protection against duplication and distribution. MARPA states that when a service document is incorporated by reference into a public document, such as an AD, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that if a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated by reference. MARPA believes that public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA adds that the legal interpretation of a document is a question of law, not of fact; therefore, unless the service document is incorporated by reference it cannot be considered. MARPA is concerned that failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA also states that service documents incorporated by reference should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates those documents. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that distribution to owners may, when the owner is a financing or leasing institution, not actually reach the people responsible for accomplishing the AD. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

We understand the commenter's concern. The Office of the **Federal Register** (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This AD incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, as noted by the commenter, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the AD is necessary in response to this comment.

Request To Change Costs of Compliance Section

NWA asks that we change the Costs of Compliance section of the NPRM. NWA states that the NPRM specifies that the proposed actions would require 2 work hours per airplane. NWA adds that this is inconsistent with the work hours given in Boeing Service Bulletin 757–24–0105, Revision 2, dated April 20, 2006 (referred to in the NPRM as one source of service information for accomplishing the specified actions). The service bulletin specifies 8 work hours for Group 1 airplanes and 7.5 work hours for Group 2 airplanes.

We do not agree to increase the work hours required to do the inspections. The costs of compliance that are discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. In this case, the only actions required by the AD for all airplanes are the inspections. The costs of compliance also typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. We have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 902 airplanes of the affected design in the worldwide fleet. This AD affects about 631 airplanes of U.S. registry. The actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $100,960, or $160 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–03–01 Boeing: Amendment 39–14912. Docket No. FAA–2006–25642; Directorate Identifier 2006–NM–121–AD.

Effective Date

(a) This AD becomes effective March 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; as identified in the service bulletins listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

Airplane model	Boeing Special Attention Service Bulletin	Revision level	Date
757–200, –200PF, –200CB series	757–24–0105	2	April 20, 2006.
757–300 series	757–24–0106	2	April 20, 2006.

Unsafe Condition

(d) This AD results from a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. We are issuing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200, –200PF, and –200CB series airplanes: Boeing Special Attention Service Bulletin 757–24–0105, Revision 2, dated April 20, 2006; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–24–0106, Revision 2, dated April 20, 2006.

One-Time Inspections and Corrective Actions

(g) Within 24 months after the effective date of this AD, perform a general visual inspection for damage (including but not limited to chafing) of power feeder wire bundles W3312 and W3412 at front spar station 148.90 in the left and right wings, and a general visual inspection of the support clamps for those power feeder wire bundles to determine whether the clamps are properly installed, and, before further flight, do all applicable corrective actions. Do these actions by doing all of the applicable actions in the applicable service bulletin.

Actions Accomplished Previously

(h) Inspections and corrective actions done before the effective date of this AD in accordance with the service information listed in Table 2 of this AD are acceptable for compliance with the corresponding actions required by this AD.

TABLE 2.—OTHER ACCEPTABLE SERVICE BULLETIN REVISIONS

Boeing Special Attention Service Bulletin	Revision level	Date
757–24–0105	Original	September 30, 2004.
757–24–0105	1	June 23, 2005.
757–24–0106	Original	September 30, 2004.
757–24–0106	1	June 23, 2005.

Special Flight Permit

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the generator served by the power feeder wire bundles specified in paragraph (g) of this AD is disconnected.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use Boeing Special Attention Service Bulletin 757–24–0105, Revision 2, dated April 20, 2006; and Boeing Special Attention Service Bulletin 757–24–0106, Revision 2, dated April 20, 2006; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 18, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1203 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 254

RIN 2105–AD62

[Docket OST–2007–27020]

Domestic Baggage Liability

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Final Rule.

SUMMARY: In accordance with the provisions of 14 CFR 254.6, this final rule revises the minimum limit on domestic baggage liability applicable to air carriers to reflect inflation since July 2004, the year of the most recent revision to the liability limit. Section 254.6 requires that the Department periodically revise the limit to reflect changes in the Consumer Price Index. The rule adjusts the minimum limit of liability from the current amount of $2,800, set by the Department in 2004, to $3,000, to take into account the changes in consumer prices since the prior revision.

EFFECTIVE DATE: This rule is effective on February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Senior Attorney, Office of Aviation Enforcement and Proceedings (C–70), Department of Transportation, 400 Seventh St., SW., Washington, DC 20590; (202) 366–9351.

SUPPLEMENTARY INFORMATION:

I. Supplementary Information

14 CFR Part 254 establishes minimum baggage liability limits applicable to domestic air service, currently $2,800 per passenger (See 69 FR 56693, September 22, 2004). Provisions of 14 CFR 254.6 require that the Department periodically review the minimum limit of liability prescribed in Part 254 in light of changes in the Consumer Price Index for Urban Consumers and directs the Department to revise the limit of liability to reflect changes in the price index that have occurred in the interim. Section 254.6 prescribes the use of a specific formula to calculate the revised minimum liability amount when making these periodic adjustments. Applying the formula to price index changes occurring between July 2004 and July 2006, the appropriate inflation adjustment is $2,500 x 203.5/168.3, or $3022.87. The provision requires us to round the adjustment to the nearest $100, or to $3,000.

II. Waiver of Rulemaking Procedural Requirements

With this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA allows agencies to dispense with such procedures on finding of good cause when they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553 (b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. This rulemaking is required by regulation, based on a formula, and provides for no discretion. Accordingly, we believe comment is unnecessary and contrary to the public interest, and we are issuing this revision as a final rule.

Although this final rule will become effective in 30 days, the Department will defer enforcement of the notice provision in the revised rule, as it pertains to written notice of the new limit, for a reasonable time period to allow carriers to replace or correct their current paper ticket stock and envelopes so as to provide proper written notice of the increased minimum liability limit without imposing an undue burden. Carriers are, however, subject to enforcement action from the effective date of this final rule if they otherwise fail to provide proper notice of the $3,000 liability limit or fail to apply the new limit, as appropriate.

III. Regulatory Impact Statement

Executive Order 12866

This final rule has been evaluated in accordance with the existing policies and procedures and is considered not significant under both Executive Order 12866 and DOT's Regulatory Policies and Procedures. It was not reviewed by the Office of Management and Budget. Based on the limited data available to the Department, the increase in the minimum baggage liability limit from $2,800 to $3,000 per passenger may result in U.S. carriers paying total additional reimbursements to consumers of approximately $2.6 million per year.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) does not apply to this rulemaking because we are not required to issue a notice of proposed rulemaking. However, we note that this revision of 14 CFR Part 254 provides for a minimal increase in the amount of the minimum baggage liability limit that air carriers may incur in cases of lost or damaged baggage. It will pose minor additional costs only in those instances in which carriers lose or damage baggage, or delay delivering baggage to the traveler, and it affects only carriers operating large aircraft or those carriers operating small aircraft interlining with such carriers. As a result, many operations of small entities, such as small air taxis and commuter air carriers, are not covered by the rule. Moreover, any additional costs for small entities associated with the rule should be minimal and may be covered by insurance.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 14 CFR Part 254

Air carriers, Administrative practice and procedure, Consumer protection.

■ Accordingly, the Department of Transportation revises 14 CFR Part 254, *Domestic Baggage Liability,* to read as follows:

PART 254—DOMESTIC BAGGAGE LIABILITY

■ 1. The authority citation for part 254 continues to read:

Authority: 49 U.S.C. 40113, 41501, 41501, 41504, 41510, 41702 and 41707.

■ 2. Section 254.4 is revised to read as set forth below:

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $3,000 for each passenger.

■ 3. Section 254.5 is revised to read as set forth below:

§ 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: ''Federal rules require any limit on an airline's baggage liability to be at least $3,000 per passenger.''

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. E7–1101 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 700, 730, 734, 740, 748, 758 and 762

[Docket No. 061212330–6330–01]

RIN 0694–AD88

Technical Corrections to the Export Administration Regulations and to the Defense Priorities and Allocations System (DPAS) Regulation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; technical corrections.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR), in Subchapter C, to remove an outdated reference to another agency's schedule that is no longer used by that other agency; to remove an outdated reference to another department's regulations and replace it with the department name and regulatory reference that is currently in use; to correct two references in the EAR that inadvertently directed the public to the wrong sections of the EAR for further information; and to correct contact information listed in the EAR for one (1) telephone number; one (1) fax number; one (1) e-mail address; and two (2) addresses to this rule adds an e-mail address, fax number, and address to clarify for the public where *de minimis* reports should be sent, when required by the EAR.

BIS is also correcting a typographical error in a final rule published in the **Federal Register** on July 13, 2006 (71 FR 39526) that made administrative and technical corrections to the Defense Priorities and Allocations System (DPAS) Regulation (15 CFR part 700).

DATES: *Effective Date:* This rule is effective: January 29, 2007.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD88 in all comments, and in the subject line of email comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: For Export Administration Regulation related questions contact Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440. For Defense Priorities and Allocations System (DPAS) Regulation related questions contact Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–2233.

SUPPLEMENTARY INFORMATION: This rule makes the following technical corrections to the Export Administration Regulations (EAR):

In § 734.2 (Important EAR terms and principles), this rule removes an outdated reference to schedule ''E'' issued by the Bureau of Census in paragraph (b)(8), because schedule ''E'' has not existed since 1989. Schedule ''C'' remains in existence and will continue to be listed in paragraph (b)(8) to provide a reference for the public for the Classification of Country and Territory Designations for U.S. Export Statistics, issued by the Bureau of the Census.

In Supplement No. 2 to Part 734 (Calculation of Values for *De minimis* Rules), this rule revises paragraph (b)(5) and adds new paragraphs (b)(5)(i), (b)(5)(ii) and (b)(5)(iii) to add an e-mail address, fax number, and address, respectively, to clarify for the public where *de minimis* reports should be sent when required by the EAR and the methods of delivery available.

In § 740.12 (Gift Parcels and Humanitarian Donations (GFT)), this rule corrects an outdated EAR reference in the ''note to paragraph (a)'', that directed the public to § 748.9(e) of the EAR for licensing of multiple gift parcels. The correct EAR reference, which this rule adds to the note to paragraph (a), is § 748.8(d). To further assist the public, this rule also adds to the note to paragraph (a) a reference, to Supplement No. 2 to Part 748 paragraph (d), for additional information regarding gift parcels.

In § 740.14 (Baggage (BAG)), this rule removes an outdated reference in paragraph (e)(2) to the ''Department of Treasury Regulations (27 CFR 178.115(d)),'' because these regulations were renumbered from Part 178 to Part 478 when the law enforcement functions of Alcohol, Tobacco and Firearms (ATF) under the Department of the Treasury were transferred to the Department of Justice, effective January 24, 2003. To conform with these changes, this rule removes the reference to ''the Department of Treasury's Regulations (27 CFR 178.115(d))'', and adds the updated reference to

''Department of Justice Regulations (27 CFR 478.115(d))''.

In § 748.2 (Obtaining Forms; Mailing Addresses), this rule corrects the contact information listed, in the unassigned paragraph of paragraph (a), for the Bureau of Industry and Security in San Jose, California. The updated contact information for this office is ''Bureau of Industry and Security, U.S. Department of Commerce, 96 North 3rd Street, Suite 250, San Jose, CA 95112 ; Tel: (408) 291–4212; Fax: (408) 291–4320''. To conform with this change made in § 748.2(a), this rule also corrects § 730.8 (How to proceed and where to get help), in paragraph (c), by correcting that same reference to the Bureau of Industry and Security in San Jose, California. Also in § 748.2, this rule corrects the zip code listed for the Bureau of Industry and Security in the second sentence of paragraph (c) by removing the zip code ''20044'' and adding the correct zip code ''20230''.

In § 758.5 (Conformity of Documents and Unloading of Items), this rule corrects the e-mail address listed in paragraph (e)(2)(ii) for the Regulatory Policy Division. The correct e-mail address, which this rule adds to that paragraph, is ''*rpd2@bis.doc.gov*''.

In § 762.6 (Period of Retention), this rule corrects an outdated EAR reference in paragraph (b) that, prior to publication of this rule, had directed the public to § 765.5(c)(4)(ii) for records pertaining to voluntary disclosures. The correct EAR reference, which this rule adds to that sentence, is § 764.5(c)(4)(ii).

This rule also makes the following correction to the Defense Priorities and Allocations System (DPAS) Regulation:

In Schedule I to Part 700—Approved Programs and Delegate Agencies, there is a typographical error in the form of the word ''and'' in the N5 Approved Program description. This rule corrects the N5 Approved Program description to read ''Domestic counter-terrorism, including law enforcement.''

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, (71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (IEEPA).

Rulemaking Requirements

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

2. 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 Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_roskter@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553 (b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. The revisions made by this rule are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR and to the DPAS, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 740 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 748

Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 730, 734, 740, 748, 758 and 762 of the Export Administration Regulations (15 CFR parts 730–799) and part 700 of the Defense Priorities and Allocations System (DPAS) Regulation (15 CFR part 700) are amended as follows:

PART 700—[CORRECTED]

■ 1. The authority citation for 15 CFR part 700 continues to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

Schedule I to Part 700 [Amended]

■ 2. In Schedule I to Part 700—Approved Programs and Delegate Agencies, under the ''Approved program'' column, correct ''Domestic and counter-terrorism, including law

enforcement'' to read ''Domestic counter-terrorism, including law enforcement''.

PART 730—[AMENDED]

■ 3. The authority citation for 15 CFR part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 4. Section 730.8 is amended by revising the undesignated paragraph at the end of paragraph (c) for the ''U.S. Export Assistance Center'' to read as follows:

§ 730.8 How to proceed and where to get help.

* * * * *

(c) * * *

Bureau of Industry and Security, U.S. Department of Commerce, 96 North 3rd Street, Suite 250, San Jose, CA 95112, Tel: (408) 291–4212, Fax: (408) 291–4320.

PART 734—[AMENDED]

■ 5. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 6. Section 734.2 is amended by revising the last sentence of paragraph (b)(8) to read as follows:

§ 734.2 Important EAR terms and principles.

* * * * *

(b) * * *

(8) * * * These destinations are listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census.

* * * * *

■ 7. Supplement No. 2 to part 734 is amended by revising paragraph (b)(5) to read as follows:

Supplement No. 2 to Part 734—Calculation of Values for De Minimis Rules

* * * * *

(b) * * *

(5) *Report and wait.* If you have not been contacted by BIS concerning your report within thirty days after filing the report with BIS, you may rely upon the calculations in your report and the *de minimis* exclusions for software and technology for so long as you are not contacted by BIS. BIS may contact you concerning your report to inquire of you further or to indicate that BIS does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BIS, you may not rely upon the *de minimis* exclusions for software and technology in § 734.4 of this part until BIS has indicated whether or not you may do so in the future. You must include in your report the name, title, address, telephone number, and facsimile number of the person BIS may contact concerning your report. Please submit your report to:

(i) E-mail: *rpd2@bis.doc.gov*;

(ii) Fax: (202) 482–3355; or

(iii) Mail or Hand Delivery/Courier: Regulatory Policy Division, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

PART 740—[AMENDED]

■ 8. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 9. Section 740.12 is amended by revising the last sentence of Note to paragraph (a) to read as follows:

§ 740.12 Gift Parcels and Humanitarian Donations (GFT).

(a) * * *

Note to paragraph (a) of this section: * * * (See § 748.8(d) and Supplement No. 2 to Part 748 paragraph (d) of the EAR for licensing of multiple gift parcels).

* * * * *

■ 10. Section 740.14 is amended by revising paragraph (e)(2) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(e) * * *

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of the Department of Justice Regulations (27 CFR 478.115(d)).

* * * * *

PART 748—[AMENDED]

■ 11. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 12. Section 748.2 is amended:

■ a. By revising the undesignated paragraph at the end of paragraph (a) for the ''U.S. Export Assistance Center''; and

■ b. By revising paragraph (c) to read as follows:

§ 748.2 Obtaining forms; mailing addresses.

(a) * * *

Bureau of Industry and Security, U.S. Department of Commerce, 96 North 3rd Street, Suite 250, San Jose, CA 95112, Tel: (408) 291–4212, Fax: (408) 291–4320.

(b) * * *

(c) All applications should be mailed to the following address, unless otherwise specified: Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: ''Application Enclosed''. BIS will not accept applications sent C.O.D.

PART 758—[AMENDED]

■ 13. The authority citation for 15 CFR part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025,

3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 14. Section 758.5 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 758.5 Conformity of documents and unloading of items.

* * * * *

(e) * * *

(2) * * *

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, Room 2705, 14th and Pennsylvania Avenue, NW., Washington, DC 20230; phone number 202–482–0436; facsimile number 202–482–3322; and E-Mail address: *rpd2@bis.doc.gov*.

PART 762—[AMENDED]

■ 15. The authority citation for 15 CFR part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 16. Section 762.6 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 762.6 Period of retention.

* * * * *

(b) * * * This prohibition applies to records pertaining to voluntary disclosures made to BIS in accordance with § 764.5(c)(4)(ii) and other records even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

Dated: January 23, 2007.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E7–1336 Filed 1–26–07; 8:45 am]

BILLING CODE 3510–33–P

LEGAL SERVICES CORPORATION

45 CFR Part 1621

Client Grievance Procedures

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Legal Services Corporation's regulation on client grievance procedures. These changes are intended to improve the utility of the regulation for grantees and their clients and applicants for service in the current operating environment. In particular, the changes clarify what procedures are available to clients and applicants, emphasize the importance of the grievance procedure for clients and applicants and add clarity and flexibility in the application of the requirements for hotline and other programs serving large and widely dispersed geographic areas.

DATES: This final rule becomes effective on February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's (LSC) regulation on client grievance procedures, 45 CFR Part 1621, adopted in 1977 and not amended since that time, requires that LSC grant recipients establish grievance procedures pursuant to which clients and applicants for service can pursue complaints with recipients related to the denial of legal assistance or dissatisfaction with the legal assistance provided. The regulation is intended to help ''insure that legal services programs are accountable to those whom they are expected to serve.'' 42 FR 37551 (July 22, 1977).

As noted above, Part 1621 has not been amended since its original adoption nearly 30 years ago. A Notice of Proposed Rulemaking (NPRM) was published in 1994 which would have instituted some more specific requirements for the grievance process and clarified the situations in which access to the grievance process is appropriate. However, due to significant legislative activity in 1995 and 1996, no final action was ever taken on the 1994 NPRM and the original regulation has remained in effect.

As part of a staff effort in 2001 and 2002 to conduct a general review of LSC's regulations, the Regulations Review Task Force found that a number of the issues identified in the 1994 NPRM remained extant. The Task Force recommended in its Final Report (January 2002) that Part 1621 be considered a higher priority item for rulemaking. Representatives of the grantee community agreed at that time that rulemaking to revise and update Part 1621 was appropriate. The Board of Directors accepted the report and placed Part 1621 on its priority rulemaking list. No action was taken on this item prior to the appointment of the current Board of Directors.

After the appointment of the current Board of Directors, LSC Management recommended to the Board that a rulemaking to consider revision of Part 1621 was still appropriate. The Board of Directors agreed and on October 29, 2005, the Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation on client grievance procedures, 45 CFR Part 1621. The Board further directed that LSC convene a Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any Notice of Proposed Rulemaking (NPRM). LSC convened a Rulemaking Workshop on January 18, 2006, and provided a report to the Committee at its meeting on January 27, 2006. As a result of that Workshop and report, the Board directed that LSC convene a second Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any NPRM. LSC convened a second Rulemaking Workshop on March 23, 2006 and provided a report to the Committee at its meeting on April 28, 2006. As a result of the second Workshop and report, the Board directed that a Draft NPRM be prepared. The Committee considered the Draft NPRM at its meeting of July 28, 2006 and the Board approved this NPRM for publication and comment at its meeting of July 29, 2006. LSC published the NPRM on August 21, 2006 (71 FR 48501). LSC received five timely comments on the NPRM.

A draft final rule was prepared by Management for presentation to the Committee at its October 27, 2006, meeting. Prior to that meeting, however, LSC received a request from the National Legal Aid and Defender Association (NLADA) that LSC postpone consideration of the draft final rule and reopen the comment period to allow the client community additional time to respond to the proposed changes in the rule. In response to that request, action on the draft final rule was deferred and the NPRM was republished for comment on November 7, 2006 (71 FR 65064). LSC received three timely additional comments, one from the client caucus of an LSC grantee, one from the client committee of a non-LSC grantee legal services provider, and one from the Center for Law and Social Policy on behalf of NLADA, replacing CLASP/NLADA's previously submitted comments. LSC also received two late filed comments, one from an individual past client of a recipient and one from the Chairperson of the NLADA Client Policy Group.[1] After consideration of

[1] The comments from the Chairperson of the NLADA Client Policy Group although dated

the additional comments, Management presented a revised draft final rule to the Committee at its meeting of January 19, 2007. The Committee recommended adoption of the draft final rule to the Board of Directors and the Board adopted the changes to Part 1621, as set forth herein, at its meeting of January 20, 2007.

Summary of the Rulemaking Workshops

LSC convened the first Part 1621 Rulemaking Workshop on January 18, 2006. The following persons participated in the Workshop: Gloria Beaver, South Carolina Centers for Equal Justice (now known as South Carolina Legal Services) Board of Directors (client representative); Steve Bernstein, Project Director, Legal Services of New York—Brooklyn; Colleen Cotter, Executive Director, The Legal Aid Society of Cleveland; Irene Morales, Executive Director, Inland Counties Legal Services; Linda Perle, Senior Counsel, Center for Law and Social Policy; Melissa Pershing, Executive Director, Legal Services Alabama; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Chairperson, National Legal Aid and Defenders Association Client Policy Group (client representative); Chuck Wynder, Acting Vice President, National Legal Aid and Defenders Association; Steven Xanthopoulous, Executive Director, West Tennessee Legal Services; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, Senior Assistant General Counsel, LSC Office of Legal Affairs; Bert Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Michael Genz, Director, LSC Office of Program Performance; Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs; and Karena Dees, Staff Attorney, LSC Office of Inspector General.

The discussion was wide-ranging and open. The participants first discussed the importance of and reason for having a client grievance process. There was general agreement that the client grievance process is important to give a voice to people seeking assistance from legal services programs and to afford them dignity. The client grievance process also helps to keep programs accountable to their clients and community. It was generally agreed that the current regulation captures this purpose well. However, it was noted that the client grievance process also can be an important part of a positive client/applicant relations program and serve as a source of information for programs and boards in assessing service and setting priorities. This potential is not currently reflected in the regulation.

The participants noted that the vast majority of complaints received involve complaints regarding the denial of service, rather than complaints over the manner or quality of service provided. The vast majority of complaints over the manner and quality of service provided are resolved at the staff level (including with the involvement of the Executive Director); complaints which need to come before the governing body's grievance committee(s) are few and far between. It was noted that many recipients have the experience of receiving multiple complaints over time from the same small number of individuals.

In the course of the discussion, the group discussed a variety of other issues related to the client grievance process. The group also considered the fact that some of the issues raised, although important, may not be easily or most appropriately addressed in the text of the regulation. Some of these issues are summarized as follows:

- Whether programs can be more ''proactive'' in making clients and applicants aware of their rights under the client grievance procedure, but do so in a positive manner that does not create a negative atmosphere at the formation of the attorney-client relationship. It was noted that while informing clients of their rights can be empowering, suggesting at the outset that they may not like the service they receive is not conducive to a positive experience.
- The appropriate role of the governing body in the client grievance/client relations process;
- Challenges presented in providing proper notice of the client grievance procedure to applicants and clients who are served only over the telephone and/or email/internet interface;
- Application of the process to Limited English Proficiency clients and applicants;
- Whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g., by a higher proportion of clients than the governing body has generally;
- Challenges presented by a requirement for an in-person hearing and what other options may be appropriate;
- Whether the limitation of the grievance process related to denials of service to the three enumerated reasons for denial in the current rule is too limited given the wide range of reasons a program may deny someone service;
- Whether the grievance process should include cases handled by non-staff such as PAI attorneys, volunteers, attorneys on assignment to the grantee (often as part of a law firm pro bono program);

Finally, the group was in general agreement that additional opportunity for comment and fact finding would prove useful to both LSC and the legal services community before LSC committed to moving ahead with the development of a Notice of Proposed Rulemaking.

LSC convened its second Part 1621 Rulemaking Workshop March 23, 2006. The following persons participated in the second Workshop: Claudia Colindres Johnson, Hotline Director, Bay Area Legal Aid (CA); Terrence Dicks, Client Representative, Georgia Legal Services; Breckie Hayes-Snow, Supervising Attorney, Legal Advice and Referral Center (NH); Norman Janes, Executive Director, Statewide Legal Services of Connecticut; Harry Johnson, Client Representative, NLADA Client Policy Group; Joan Kleinberg, Managing Attorney, CLEAR, Northwest Justice Project (WA); George Lee, Client Representative, Kentucky Clients Council; Richard McMahon, Executive Director, New Center for Legal Advocacy (MA); Linda Perle, Senior Counsel, Center for Law and Social Policy; Peggy Santos, Client Representative, Massachusetts Legal Assistance Corporation; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Chairperson, NLADA Client Policy Group; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, Senior Assistant General Counsel, LSC Office of Legal Affairs; Bertrand Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Cheryl Nolan, Program Counsel, LSC Office of Program Performance; and Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs.

The motivation for convening a second Workshop was to elicit further information about how hotlines approach the issue of providing notice

December 21, 2006 (prior to the close of the comment period) were not submitted properly in accordance with the directions set forth in the NPRM and were, consequently, received late. The late filed comments were nonetheless considered in the development of this final rule.

to clients and applicants and how they process grievances given that in-person contact with such programs is extremely rare, and how clients and applicants experience the grievance process and what the process means for them. This, accordingly, was the primary focus of the discussion at the second Workshop, although there was also some discussion of additional issues, such as client confidentiality and potential application of the grievance process to private attorneys providing services pursuant to a grantee's PAI program. The following issues and themes emerged from the discussion:

- The programs felt that a strength of the regulation is its flexibility. Programs have different delivery systems, even among hotlines, and different approaches. They cautioned against adopting specific practices in the regulation itself. Rather, they felt that programs should be free to adopt practices that best meet their delivery model and communities.
- Hotlines have different approaches to providing notice to callers. Some programs include it in their automated script while others do not mention the grievance process. There is some concern about making the initial contact seem negative by bringing up the grievance process. There is also a concern about callers being denied service without knowing about their grievance rights. Many participants felt that the regulation should not require notice in the automated hotline script.
- The regulation could emphasize the importance of the notice but leave it to the programs to figure out the best way to provide it in different situations.
- Client and applicant dignity is very important. Most concerns are addressed when the applicant feels that they were heard and taken seriously, even if they are denied service.
- All of the programs reported that intake staff will deal with dissatisfied callers by offering to let them talk to a supervisor, sometimes the executive director. They are given the choice of talking to someone or filing a written complaint. They almost always want to talk to someone. Talking with someone higher up almost always resolves the issue and usually entails an explanation of the decision not to provide service.
- Decisions to deny service sometimes involve consideration of the priorities of other entities such as pro bono programs that take referrals. Some programs handle intake for themselves and for other organizations. The criteria for intake for different entities are not always the same. A program may have to handle complaints about denials of service that involve a different program's priorities.
- In many situations there is nothing more that the program can do, especially when a denial of service decision was correct. There was a concern about creating lots of procedures that would give a grievant false hope. It is important that the applicant get an ''honest no'' in a timely fashion.
- The oral and written statements to a grievance committee do not require an in person hearing. These can be conveyed by conference call, which may be better in some circumstances. In some cases though, clients or applicants have neither transportation nor access to a phone. Programs may have difficulty providing grievance procedures in those situations.
- Hotlines have a number of callers who never speak to a member of the hotline staff. They include hang ups, disconnected calls, people who got information through the automated system, and people who could not wait long enough. These calls may include frustrated applicants who never got to the denial of service stage.
- Websites could provide client grievance information, but that also raises questions about how to make grievance information available only to people with complaints about that program. There is a danger of a generally available form becoming a conduit for a flood of complaints unrelated to a program and its services.
- The grievance process itself should not be intimidating. Often the applicants and clients are already very frustrated and upset before contacting the program.
- There was discussion of what process, if any, a client had for addressing quality concerns with a PAI attorney or a pro bono referral. One program reported informally mediating these disputes. Another program reported surveying clients at the end of PAI cases and following up on any negative comments. One program reported that its separate pro bono program has its own grievance procedures. There was a concern that private attorneys would not volunteer if they felt that they would be subject to a program's grievance process and grievance committee. There was some discussion acknowledging a distinction between paid and unpaid PAI attorneys, but noting that clients do not see a difference.

Section-by-Section Analysis

After considering the discussions from the Workshops and all of the comments received in response to the NPRM, LSC has determined that the regulation is generally working as intended and that some of the issues raised in the course of the Workshops, while of significant importance, are not issues which can easily be addressed by changes in the regulation itself. Accordingly, LSC is adopting only modest changes to the text of the regulation. LSC believes, however, that these changes will improve the regulation and benefit grantees, clients and applicants for legal assistance. These changes are discussed in greater detail below.

At the outset, we note one comment in which the commenter requested that LSC confirm its understanding of the terms ''applicant'' and ''deny'' (or ''denial'') as those terms are used throughout this regulation. LSC intends no change to the meaning of the terms ''denial'' and ''deny'' as they are used in the current client grievance procedures rule. LSC intends that ''applicant'' has the same meaning as it does in Part 1611, Financial Eligibility, except that for the purposes of this Part, ''applicant'' shall also include groups which apply for legal assistance.

Section 1621.1—Purpose

LSC proposed to amend this section to clarify that the grievance procedures required by this section are intended for the use and benefit of applicants for legal assistance and for clients of recipients and not for the use or benefit of third parties. LSC received one comment specifically supporting and no comments specifically opposing this amendment. Accordingly, LSC adopts this change as proposed.

In addition, LSC proposed to delete the reference to ''an effective remedy'' because the grievance process is just that, a process and not a guarantee of any specific outcome or ''remedy'' for the complainant. LSC received three comments specifically supporting and three comments specifically opposing this change.[2] The comments opposing the proposed change (all of which are from client representative groups) stated

[2] One of the comments opposing this change was from the Chairperson of the NLADA Client Policy Group which included as attachments a petition signed by various client representatives opposing the proposed changes to the purpose section of the regualtion and 14 individual comments similarly opposing the changes to the purpose section. Although it is not entirely clear from the Chairperson's comments, it appears that these individual comments formed the basis for the Chairperson's comments. As such, they have been considered as part of the Chairperson's comments. It should also be noted that one of the 14 individual comments addressed proposed changes to sections 1621.3 and 1621.4. These remarks are addressed separately in the respective discussions of those sections, below.

that removal of the reference to an effective remedy undermines the purpose of the rule and suggests that so long as the recipient provides a grievance process, the outcome to the client in cases in which the client has a meritorious complaint is immaterial. Each of these comments suggested that LSC retain the current language of the rule. LSC is sensitive to the concerns of the client community that the rule not imply that the complainant's satisfaction with the ultimate outcome of the process is entirely immaterial. LSC agrees that a goal of an effective grievance procedure should be to foster a mutually satisfactory outcome in as many cases as possible. Indeed, this concern underlies LSC's decision to add language to the rule (in sections 1621.3 and 1621.4) that a recipient's grievance procedures must be designed to foster effective communication between the complainant and the recipient. However, LSC disagrees that deletion of the reference to a ''remedy'' either undermines the purpose of the rule or implies that the applicant's/client's satisfaction as to the outcome of the grievance is immaterial.

As one commenter notes, the current rule is not understood to require applicants or clients with non-meritorious complaints to be awarded the remedy they seek. To the extent that the current language of the regulation is understood not to mean what it says, it is appropriate to amend it to more clearly reflect what the language is, in fact, intended to mean. Moreover, on the basis of the comments made during the Rulemaking Workshops and other comments, although it appears that nearly all grievances are resolved to at least some level of satisfaction on the part of the applicant/client, the rule is not intended to and cannot guarantee that the grievance process provide a particular resolution to the applicant's/client's satisfaction in all cases. There are and will continue to be instances in which, even after the grievance process, an applicant or client does not receive the specific ''remedy'' he or she wants. For example, an applicant may not be accepted as a client or a client may not get the recipient to agree to appeal his/her unsuccessful case, notwithstanding that this is the ''remedy'' the applicant/client wants. In such cases, the best the regulation can do is ensure that complainants have access to a fair and reasonable complaint process.

In light of the above, LSC is adopting a revised statement of purpose which LSC believes addresses both LSC's and the client community's concerns. Specifically, LSC is adding an additional sentence to this section providing:

> This part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in the provision of an effective remedy in the resolution of complaints.

LSC believes that the addition of this language meets the commenters' concerns that grievance procedures should be designed and implemented with the intention of resolving complaints to at least some level of satisfaction of the complainant in as many cases as possible. Indeed, LSC believes that this is already the intention and practice of recipients. As such, adding this clarifying language to the regulation bolsters the notion of accountability to applicants and clients which animates Part 1621, while acknowledging that no specific outcome can be guaranteed in any particular instance.

LSC considered including a statement in this section clarifying that the client grievance procedure is not intended to and does not create any entitlement on the part of applicants to legal assistance. LSC specifically invited comment on this issue in the NPRM. One commenter agreed with LSC's determination that the addition of such a statement would not ultimately be a useful addition to the regulation because it seems unlikely that many applicants for legal assistance will have read the regulation prior to applying for legal assistance. Another commenter expressed some concern that an express statement that there is no entitlement to service could be used by a recipient as a basis to deny grievances in instances in which the recipient failed to follow its own case acceptance or other policies. Another commenter suggested that including such a statement would undermine the purpose of the rule and would be dispiriting to disappointed clients. However, LSC also received two comments suggesting that LSC should include language in this section making it clear that the existence of a grievance procedure does not mean that an applicant is entitled to service. These commenters argue that such a statement would be helpful in that, even if applicants do not read the grievance procedures rule, recipients would have something concrete to refer to in talking with applicants unhappy with being denied legal assistance.

LSC acknowledges that there are good arguments to be made in favor of both positions (inclusion of a non-entitlement statement and non-inclusion of such a statement). On balance, LSC continues to believe that adding such a statement to the regulation is unnecessary. To the extent that it may be helpful to have something to cite to when talking to a complaining applicant as a way of explaining why he or she is being denied service, reference can be made to this discussion in the preamble of the regulation and to LSC's financial eligibility regulation at 45 CFR Part 1611 (which does explicitly state that a determination of financial eligibility does not create any entitlement to legal assistance).

Another issue which came up during the Workshops was the ancillary use by recipients of the client grievance procedures as a feedback mechanism to help recipients identify issues such as the need for priorities changes (i.e., because there are increasing numbers of applicants seeking legal assistance for problems not otherwise part of the recipient's priorities), foreign language assistance, staff training, etc. Although LSC believes that information collected through the client grievance procedures can and should, as a best practice, be used in this manner, such ancillary use is incidental and not the purpose of the client grievance procedures *per se.* LSC believes that adding a reference to such ancillary use to the purpose statement of the regulation would be inappropriate and would dilute the focus of the regulation from its purpose of providing applicants and clients with an effective avenue for pursuing complaints. LSC invited comment on this issue and received one comment agreeing with LSC's position. Accordingly, LSC is not adding any language to the regulation on this issue.

LSC received one additional comment on this section. This commenter suggested that LSC add a statement to the regulation that the client grievance procedure process does not take the place of a complaint filed with the appropriate state or local bar association and that the bar association ''expects the client to make a good faith effort to resolve the matter * * * [by] going through the client grievance process.'' As an initial matter, LSC is not in a position to speak for any bar association about what its complaint process requirements are or should be. As such, adding language to Part 1621 about what bar associations may or may not expect of clients filing complaints is beyond LSC's authority.

The commenter's first point, regarding the fact that grievance procedures are not a substitute for whatever complaint procedure may be available under state or local rules of professional responsibility, is well taken. LSC agrees with the commenter about this basic fact. LSC believes, however, that this

discussion in the preamble is sufficient to make this point and that addition to the regulation of a statement to this effect is not necessary.

Section 1621.2—Grievance Committee

LSC did not propose any changes to this section. There was discussion in one of the Workshops about whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g. by a higher proportion of clients than the governing body has generally. It was not clear from the discussion, however, what such a change would accomplish and there was no clear feeling that the current requirement was resulting in ineffective or inappropriate grievance committees. Accordingly, LSC considers the current wording of the regulation, which requires the proportion of clients and lawyer members of the grievance committee to approximate that of the governing body, to be sufficiently flexible for recipients to respond to local conditions. LSC received one comment opposing and two comments expressly supporting LSC's approach to this issue. LSC continues to believe any change to this section to be unwarranted.

The comments supporting LSC's position on this issue did, however, suggest that LSC add a discussion to the preamble to note that although there is a role for each recipient's governing body in the grievance process, it is also important to recognize the limited role of the governing body in the day-to-day operations of the recipient. Further, it is incumbent on all parties to recognize that governing body members have fiduciary duties to their organization and must be careful, when engaging in any grievance committee activities, to safeguard these duties and avoid any potential conflicts of interest. LSC agrees that these are important considerations, and, accordingly, sets them forth herein. LSC is confident that governing body members currently serving on grievance committees are generally balancing their various duties and responsibilities appropriately. Inclusion of this discussion in the preamble should not be taken as an indication that either LSC or the commenters are concerned that current grantee/governing body practices are raising problems involving micromanagement of recipients' day-to-day operations.

The matter of potential conflicts of interest between a Board member's duty to the grievance process and his/her duty to the organization was the subject of the one comment LSC received opposing the proposed retention without amendment of this section. That commenter suggested that LSC create a Grievance Committee within LSC to process all client complaints. This, the commenter argues, would alleviate any potential conflicts because it would remove recipient Board members from the complaint resolution process. This commenter further argues that such a change would be appropriate because client members of governing bodies who are not attorneys do not have the proper ''legal training to sit in judgment of legal procedures.''

Eliminating recipient grievance committees would eliminate any potential conflict of interest issues. However, as noted above, LSC is confident that governing body members currently serving on grievance committees are generally balancing their various duties and responsibilities appropriately. Thus, LSC does not see this issue as significant enough to justify the solution proposed.

More importantly, LSC believes that even with the inherent balancing of interests of which recipients and their Board members must be mindful, this is a matter appropriately committed to the separate and local control of each recipient. Having LSC perform the functions of the respective governing body grievance committees would be an undue encroachment by LSC on the independence of recipients. Moreover, for LSC to exercise such authority would require an unjustified reallocation of LSC's resources so that LSC staff could become well versed in each recipients' particular grievance procedures and local situation.

Section 1621.3—Complaints by Applicants About Denial of Legal Assistance

LSC proposed to reorganize the regulation to move the current section dealing with complaints about denial of service to applicants before the section on complaints by clients about the manner or quality of legal assistance provided. This change was proposed for two reasons. First, the vast majority of complaints that recipients receive are from applicants who have been denied legal assistance for one reason or another. As such, it seems appropriate for this section to appear first in the regulation. Second, and more importantly, the current regulation (and the regulation as being proposed herein) requires recipients to adopt a simpler procedure for the handling of these complaints. There was some concern that some level of confusion is created by having the more detailed procedures required by the section on complaints about the manner or quality of legal assistance appear first in the regulation. Put another way, there was concern that the current organization of the regulation obscures the fact that recipients are permitted to adopt a different procedure for processing the denial of complaints of legal assistance by applicants.

LSC received two comments specifically supporting the proposed reorganization. LSC continues to believe the proposed reorganization will clarify this matter and make the regulation easier for recipients and LSC to use. Accordingly, LSC adopts the change in organization as proposed.

In addition to the proposed reorganization discussed above, LSC proposed modest substantive changes to the regulation. First, LSC proposed to add language to the title of this section and the text of the regulation to clarify that this section refers to complaints by applicants about the denial of legal assistance. Consistent with the proposed changes in the purpose section, LSC believes these changes will help clarify that the grievance procedure is available to applicants and not to third parties wishing to complain about denial of service to applicants who are not themselves complaining. LSC notes that for applicants who are underage or mentally incompetent, the applicant him or herself is not likely to be directly applying for legal assistance and LSC does not intend this change to impede the ability of any person (parent, guardian or other representative) to act on that applicant's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the applicant is otherwise capable of complaining personally. LSC received two comments expressly supporting these changes and no comments opposing them. Accordingly, LSC adopts these changes as proposed.

Second, LSC proposed to delete the language which limits complaints about the denial of legal assistance to situations in which the denial was related to the financial ineligibility of the applicant, the fact that legal assistance sought is prohibited by the LSC Act or regulations or lies outside the recipient's priorities. Applicants are denied for these and other reasons, such as lack of resources, application of the recipient's case acceptance guidelines, the merit of the applicant's legal claim, etc. By removing these limitations, the regulation will apply in all situations of a denial of legal assistance. From the applicant's point of view it is immaterial why the denial has occurred

and LSC can discern no good reason to afford some applicants, but not others, an avenue for review of decisions to deny legal assistance. Moreover, the recipients participating in the workshops noted that they do not make any distinction between applicants on this basis and make their grievance procedure available to any applicant denied service, regardless of the reason. LSC received two comments expressly supporting this change and no comments opposing it. LSC continues to believe that the proposed change will, therefore, not create any new burdens on recipients, yet will implement the policy in a more appropriate manner. Accordingly, LSC adopts this change as proposed.

Third, LSC proposed to clarify that the phrase ''adequate notice'' as it is used in this section is adequate notice of the complaint procedures. The current regulation is vague on this point, although in context the logical inference is that it must refer to notice of the content of the complaint procedures. LSC continues to believe clarifying the language on this point would be useful. LSC further proposed to add the words ''as practicable'' after ''adequate notice.'' This change was intended to help recipients who do not have in-person contact with many applicants and who, therefore, cannot rely on posted notice of the complaint procedures in the office. Such recipients use a variety of methods of providing notice, from posting on Web sites, to inclusion of notice in phone menus, to having intake workers and attorneys speaking with applicants provide the information orally. All of these methods can be sufficient and appropriate to local circumstances. The proposed phrasing was intended to ensure that recipients have sufficient flexibility to determine exactly how and when notice of the complaint procedures are provided to applicants, while retaining the requirement that the notice be ''adequate'' to achieve the purpose that applicants know their rights in a timely and substantively meaningful way so as to exercise them if desired.

LSC received several comments addressing the proposed changes concerning ''adequate notice.'' Three commenters suggested that the clarification proposed by LSC was not adequate. One of these commenters suggested that the phrase ''as practicable'' should instead be ''to the extent practicable,'' while another commenter suggested that the language LSC proposed in section 1621.4 is clearer and that similar language could be used in section 1621.3. LSC does not agree that the phrase ''to the extent practicable'' is substantively preferable to ''as practicable.'' LSC believes that ''to the extent practicable'' suggests that that if a recipient decides it is not practicable, the recipient is not required to provide notice at all, whereas LSC believes that that the phrase ''as practicable'' suggests that adequate notice will always be provided, but recognizes the significant leeway recipients need in determining the particular time and manner in which that notice is to be provided. However, LSC does agree that the language it proposed in section 1621.4 is clearer than the language in proposed 1621.3. Accordingly, LSC is adopting language that provides that the procedure must provide ''a practical method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint. * * *'' LSC is also changing the word ''practicable'' to ''practical'' in the following clause of that sentence to maintain consistency in language. Thus, the clause will read that the recipient's procedure for review of complaints by applicants about the denial of legal assistance ''shall provide for applicants to have an opportunity to confer with the Executive Director, or the Executive Director's designee, and, to the extent practical, with a representative of the governing body.''

Finally, LSC proposed to add a statement that the required procedure must be designed to foster effective communications between recipients and complaining applicants. It was clear in the Workshops that this is very important to both applicants and recipients. Indeed, it is one of the main reasons for having a complaint procedure. Accordingly, LSC believes it is important for the regulation to reflect this. Because LSC is confident that the vast majority of recipient grievance procedures are already designed to foster effective communications, LSC continues to believe that the proposed addition to the regulation should not create any undue burden on recipients.

LSC received two comments specifically addressing this change. One commenter suggested that this statement should not be mandatory because the requirement necessitates a subjective judgment as to what is effective. Although LSC agrees that regulations should generally set forth clear, objective standards, there are situations in which some level of discretion and judgment are appropriately incorporated into a rule. An example of this is the ''adequate'' notice requirement discussed above. One could argue that ''adequate'' is a subjective term, yet LSC believes that there is no appropriate ''one size fits all'' approach and that recipients may provide notice in a variety of ways, any of which is adequate to inform the applicant as to the existence of a complaint procedure and what they are such that the applicant can meaningfully exert his or her rights under that procedure. Similarly, LSC believes that requiring the procedures to be designed to foster effective communication signals the seriousness with which LSC takes this element of the complaint procedure process (based on the importance which both applicant and recipients place on it), yet provides for a necessary level of recipient discretion in achieving the desired results. Accordingly, LSC declines to substitute the word ''should'' for ''must'' as suggested. LSC does believe a change in this paragraph, however, is warranted. Another commenter suggested the use of the word ''shall'' for ''must'' to be consistent with the use of the word ''shall'' throughout the remainder of the regulation. LSC agrees that ''shall'' is more appropriate in this context and adopts this suggestion.

LSC considered proposing to add a statement that the required procedure must be designed to treat complaining applicants with dignity, as this was another recurring refrain LSC heard throughout the Workshops. Because treating applicants with dignity is such a basic duty, LSC preliminarily determined that it is neither necessary nor appropriate to make it a specific regulatory requirement in this context and invited comment on this issue. LSC received one comment specifically supporting LSC's determination in this respect and none in opposition. Accordingly, LSC is not adopting any specific regulatory requirement on this issue.

LSC also received a comment suggesting that the proposed language of section 1621.3, ''inappropriately involves the governing body in day-to-day case acceptance decisions because of the proposed addition of the phrase ''at a minimum.' '' LSC disagrees that the inclusion of the phrase ''at a minimum'' either negates the language in the previous sentence of the provision that the procedure be ''simple'' or, of necessity, elevates the involvement of any governing body in a recipient's day-to-day case acceptance decisionmaking. Rather, as proposed, the regulation sets forth the minimum elements the procedure must have to be compliant with the regulation while inclusion of the phrase ''at a minimum'' provides recipients with discretion to have procedures which incorporate the required minimum elements, but also

provides for additional elements, if so desired. LSC does not intend and does not believe the language will require most recipients to make significant changes in how their governing bodies' grievance committees are incorporated into the grievance procedure. As LSC noted in the preamble to the NPRM: ''LSC intends that existing complaint procedures for applicants who are denied legal assistance which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section.'' 71 FR at 48505 (August 21, 2006).

This commenter also argues that, as proposed, section 1621.3 requires each recipient to have a procedure in place to review all decisions to deny legal assistance to applicants and not just those decisions which become subject to a complaint and that this represents a substantive change to the regulation. There is nothing in the current regulation, however, which expressly limits the procedure to a review of a decision to deny legal assistance which has become the subject of a complaint. The current regulation provides only that each recipient ''shall establish a simple procedure for review of a decision that a person is financially ineligible, or that assistance is prohibited by the Act or Corporation Regulations, or by priorities established by the recipient pursuant to section [sic] 1620.'' As such, LSC does not agree that the proposed revised language (that a recipient ''shall establish a simple procedure for review of decisions to deny legal assistance to applicants'') implies any more or less than the current language does about whether the review is applicable to all decisions or only those which become a subject of a complaint. Moreover, to the extent that any decision to deny an applicant legal assistance is potentially subject to a complaint, all decisions must be subject to review. Nonetheless, neither the current regulation nor the proposed revisions are intended to require recipients to create a procedure for internal review of decisions to deny legal assistance outside of and apart from the client grievance procedure. LSC believes that the language of section 1621.3 can be clarified on this point. Accordingly, LSC is changing the language of proposed section 1621.3 to read ''[a] recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant.'' This language is also more consistent with the similar language in section 1621.4.

Finally, LSC received one comment (in the attachments to the Chairperson of the NLADA's Client Policy Group comments) suggesting that the current language of the regulation is clear and that the changes proposed make the language legalistic. This commenter suggests retaining the original language. LSC disagrees that the proposed language is less clear that the existing language. Rather, LSC believes the language being adopted, as discussed above, is clearer than the language it is replacing (as well as clearer than the existing language). Moreover, the language being adopted includes some substantive changes which LSC believes improves the utility of the regulation for recipients, applicants and clients. Accordingly, LSC declines to adopt the commenter's suggestion.

Section 1621.4—Complaints by Clients About Manner or Quality of Legal Assistance

As noted above, LSC proposed to reorganize the regulation to move the current section dealing with complaints about legal assistance provided to clients after the section on complaints by applicants about denial of legal assistance. For a discussion of the reasons for this proposed change, see the discussion at section 1621.3, above. LSC received two comments specifically supporting the proposed reorganization. LSC continues to believe the proposed reorganization will clarify this matter and make the regulation easier for recipients and LSC to use. Accordingly, LSC adopts the change in organization as proposed.

LSC also proposed some minor substantive changes. First, LSC proposed to add language to the title of this section and the text of the regulation to clarify that this section refers to complaints by clients about the manner or quality of legal assistance provided. LSC received two comments expressly supporting these changes and no comments opposing them. Consistent with the proposed changes in the purpose section, LSC continues to believe these changes will help clarify that the grievance procedure is available to clients and not to third parties wishing to complain about the legal assistance provided to clients who are not themselves complaining. Accordingly, LSC adopts these changes as proposed. As with the similar proposed changes to the section on applicants, LSC notes that for clients who are underage or mentally incompetent, the client is not likely to be directly applying and LSC does not intend this change to impede the ability of the person (parent, guardian or other representative) to act on that client's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the client is otherwise capable of complaining personally.

LSC also proposed some revision of the language setting forth the minimum requirements for the required grievance procedures. Except as noted below, these changes are not intended to create any substantive change to the regulation but, rather, to provide more structural clarity to the regulation. One such proposed change is the addition of a statement that the procedures be designed to foster effective communications between recipients and complaining clients. LSC received one comment suggesting that this statement should not be mandatory because the requirement necessitates a subjective judgment as to what is ''effective.'' The rationale for the proposed change and LSC's response to this comment are the same as for the parallel proposed change in proposed section 1621.3.

As with proposed section 1621.3, LSC considered also proposing to add a statement that the required procedure must be designed to treat complaining clients with dignity, but chose not to for the same reasons articulated in that proposed section. As noted above, LSC received one comment expressly supporting LSC's position on this issue.

LSC also proposed to amend the time specified in the rule regarding when the client must be informed of the complaint procedures available to clients. Currently, clients must be informed ''at the time of the initial visit.'' This is typically accomplished in one of several different ways, such as through the posting of the complaint procedures in the office, by providing an information sheet to clients or by including information about the grievance procedure in the retainer agreement. However, the phrase ''at the time of the initial visit'' tends to imply an in-person initial contact—a situation which in increasingly uncommon for many recipients and clients. Also, a client may not actually be accepted as a client at the time of the initial contact (whether in person or not). LSC believes that what is important is that the person being accepted as a client be informed of the available complaint procedure at that time because that is when the information appears to be most useful and meaningful for the client. Accordingly, LSC proposed that clients be informed of the grievance procedures available to them to complain about the manner or quality of the legal assistance

they receive ''at the time the person is accepted as a client or as soon thereafter as practicable.'' LSC did not propose to dictate how that notice must be provided. LSC continues to believe that this change will assist recipients and clients in situations in which the client does not have an in-person initial visit and will afford recipients the flexibility to provide notice in a manner and time appropriate to local circumstances.

LSC received three comments addressing this proposed change. All of these comments generally supported the proposed change as helpful and appropriate, but one suggested substituting the word ''practical'' for ''possible'' as it appears in proposed section 1621.4(b)(1). However, the word ''possible'' is not used in that subsection. Rather, LSC used the word ''practicable'' in that proposed subsection. LSC believes that the language as proposed already meets the intent of the comments, but LSC does not believe the use of the word ''practical'' instead of ''practicable'' is likely to cause problems in understanding or applying the rule. This change would also be consistent with the use of the word ''practical'' in section 1621.3 (discussed above). Accordingly, LSC adopts the suggested change.

LSC received two additional comments on this section. The first commenter suggested that the terms ''adequate notice'' and ''as practicable'' were too vague and instead urged LSC to adopt a requirement that recipients be required to provide a written form setting forth the grievance procedures to clients (either in person, or by mail or fax) at the time the client is accepted for service. As noted in the discussion of the term ''adequate notice'' in section 1621.3, above, recipients use a variety of methods of providing notice of grievance procedures to clients, from posting of the procedures in the office or on websites, to having written procedures available for distribution and/or included in retainer agreements, to the provision of the notice orally through recorded phone menus or by having intake workers and attorneys speaking directly with clients. All of these methods can be sufficient to achieve the purpose that clients know their rights in a timely and substantively meaningful way so as to exercise them if desired, while still being appropriate to local circumstances. Moreover, there are situations in which issues of practicality arise in the provision of notice. For example, providing a written notice by mail to a client who is seeking legal assistance in a case involving domestic violence may put the client's safety in jeopardy and in other cases emergency conditions may prevail dictating some delay in the provision of notice. For these reasons, LSC believes that adopting the commenters' suggestion would unnecessarily impinge on recipients' flexibility to determine exactly how and when notice of the complaint procedures are provided to clients. Accordingly, LSC declines to adopt this suggestion.

The second commenter asked for guidance on application of the requirements as they relate to telephone advice. Specifically, the commenter noted that they typically provide the grievance notice to clients who never come into the office in person in conjunction with a letter summarizing the advice given/actions taken. The commenter asks whether this is acceptable in cases in which the closing letter does not go out for several weeks, rather than within a few days. It is not possible for LSC to provide a definitive answer to this very general question in the preamble to the regulation because of the case-by-case variables which could determine what is ''practical'' for a given recipient in a given situation. In such situations recipients might LSC would consider, among other things, whether it is foreseeable that for a given client it will likely be several weeks before a closing letter is going to be sent out, whether there is another avenue by which the client can be reasonably informed of the grievance procedure other than the closing letter, the number of cases in which this is actually a problem. As LSC stated in the preamble to the NPRM, it intends that a recipient's existing complaint procedures for clients who are dissatisfied with the manner or quality of legal assistance provided, which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section. 71 FR at 48505 (August 21, 2006).

The last change LSC proposed to this section was to include an explicit requirement that the grievance procedures provide some method of reviewing complaints by clients about the manner or quality of service provided by private attorneys pursuant to the recipient's private attorney involvement (PAI) program under 45 CFR Part 1614. The regulation has previously been silent on this matter and LSC has not required recipients to apply the client grievance procedure to private attorneys. However, from the clients' standpoint it is immaterial whether legal assistance happens to be provided directly by the recipient or by a private attorney pursuant to the PAI program. In both cases, the client remains a client of the recipient and should be afforded some avenue to complain about legal assistance provided. At the same time, subjecting private attorneys to the same grievance procedure that applies to the recipient would likely be administratively burdensome and likely impede recipients' ability to recruit private attorneys for the PAI program. In addition, some PAI programs, such as ones administered by bar associations, already have their own complaint procedures. Also, recipients are required by the section 1614.3(d)(3) of the PAI regulation to provide effective oversight of their private attorneys. Providing some process for review of complaints about their service is reasonably considered part of that responsibility.

LSC received two comments addressing this proposal. One commenter supported this proposal, but suggested that the preamble make clear that recipients should be aware of their state bar's grievance procedures and should be prepared to refer clients to the state bar's grievance procedures (or possibly to independent counsel) when such referral would be appropriate. We agree that this is an important consideration and so note it herein.

The other commenter suggested that this provision might prove difficult for recipients in private attorney recruitment efforts and urged LSC to refrain from adopting such a provision without first soliciting input from the ABA and state and local bar associations. The comment does not address with any specificity how recruitment efforts might be impeded in light of the fact noted in the preamble to the NPRM (and restated above) that recipients are already required to provide some process for review of complaints as part of their responsibility under the PAI regulation to provide effective oversight of their participating private attorneys. Moreover, LSC believes that the issues in the rulemaking have been widely noticed and discussed since the inception of the rulemaking. More specifically, the NPRM was not only published in the **Federal Register** for public comment but it was also posted on the LSC Web site, and the public meetings at which the Rulemaking Workshops and the Draft NPRM were discussed were also publicly noticed. Should the any bar association have desired to comment, there has been ample opportunity for those organizations to do so. As such, LSC sees no reason to delay action on this particular provision.

In light of the above, LSC continues to believe that it is appropriate that this regulation contain a requirement that recipients establish a procedure to review complaints by clients about the manner or quality of service of PAI attorneys. After further consideration, however, LSC believes that there is a better way to state this requirement than as proposed in the NPRM. Accordingly, LSC section 1621.4(c) provides that:

> Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR § 1614.3(d)(3) and with applicable state or local rules of professional responsibility.

LSC believes this language does not create a substantive change in the policy proposed in the NPRM but, instead, states that policy in a clearer, more appropriate manner. Accordingly, LSC adopts the PAI-related provision as described herein. LSC reiterates, that is it not requiring recipients to afford the same procedure as provided to clients being provided service directly by the recipient. LSC also reiterates that it intends that existing formal and informal methods for review of complaints about PAI attorneys currently meeting recipients' obligations under Part 1614 continue to be used and would be considered to be sufficient to meet their obligations under this section.

LSC received three other comments addressing proposed section 1621.4. Two of these comments ask LSC to clarify that the requirement in proposed section 1621.4(d) that recipients maintain files of complaints and their disposition applies only to complaints by clients about the manner or quality of legal assistance provided and not to complaints by applicants about the denial of legal assistance. LSC believes that it is clear that this requirement applies only to that section and not to any other section in the regulation. Recipients are not required to maintain files on complaints by applicants about denial of legal assistance. LSC does not believe that any modification of the regulation is necessary and anticipates that this discussion will remove any possible ambiguity.

One of these commenters further suggested that either the rule or preamble should make clear that files are required only for complaints that are not resolved informally by staff, the Executive Director or the Executive Director's designee and that the requirement should, instead, apply only to complaints that have been considered by the Board's grievance committee. The current requirement found in section 1621.3(c) is not limited in the manner suggested by the commenter. Rather, the current language provides that in cases of complaints by clients about the manner of quality of legal assistance provided ''a file containing every complaint and a statement of its disposition shall be preserved for examination by the Corporation'' (emphasis added). The proposed provision is exactly the same as the current one (except for substitution of ''LSC'' for ''Corporation''). For LSC to adopt the position urged by the commenter in the preamble would result in a preambular statement directly at odds with the clear language of the regulation. For LSC to change the regulation would result in a significant substantive change for which no rationale has been articulated. LSC declines to adopt this suggestion.

Finally, LSC received one comment (in the attachments to the Chairperson of the NLADA's Client Policy Group comments) suggesting that the current language of the regulation is clear and that the changes proposed make the language legalistic. This commenter suggests retaining the original language. LSC disagrees that the proposed language is less clear than the existing language. Rather, LSC believes the language being adopted, as discussed above, is clearer than the language it is replacing (as well as clearer than the existing language). Moreover, the language being adopted includes some substantive changes which LSC believes improves the utility of the regulation for recipients, applicants and clients. Accordingly, LSC declines to adopt the commenter's suggestion.

List of Subjects in 45 CFR Part 1621

Grants programs—law, Legal services.

■ For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC revises 45 CFR part 1621 as follows:

PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.

1621.1 Purpose.
1621.2 Grievance committee.
1621.3 Complaints by applicants about denial legal assistance.
1621.4 Complaints by clients about manner or quality of legal assistance.

Authority: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a) (1).

§ 1621.1 Purpose.

This Part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided. This Part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in the provision of an effective remedy in the resolution of complaints.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints by applicants about denial of legal assistance.

A recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant. The procedure shall, at a minimum, provide: A practical method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint; and an opportunity for applicants to confer with the Executive Director or the Executive Director's designee, and, to the extent practical, with a representative of the governing body. The procedure shall be designed to foster effective communications between the recipient and complaining applicants.

§ 1621.4 Complaints by clients about manner or quality of legal assistance.

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as is practical, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral or written statement to a

grievance committee established by the governing body as required by § 1621.2 of this Part. The procedures shall also: provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative; permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR § 1614.3(d)(3) and with applicable state or local rules of professional responsibility.

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E7–1290 Filed 1–26–07; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 010507C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, January 25, 2007, through 6 a.m., January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone was reached on January 24, 2007. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, January 25, 2007, through 6 a.m., January 22, 2008, the beginning of the next fishing season, i.e., the day after the 2008 Martin Luther King Jr. Federal holiday.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1 through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL, boundary), i.e., the area off Collier County.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 24, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–351 Filed 1–24–07; 1:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 18
Monday, January 29, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777–200, –300, and –300ER series airplanes. This proposed AD would require installing Teflon sleeving under the clamps of the wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by March 15, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27042; Directorate Identifier 2006–NM–225–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s),

and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report that seven operators discovered pinched insulation or wiring damage under the clamps of wire bundles routed along the fuel tank boundary structure of Model 777 airplanes. In some cases, bare wires were discovered. Also, it was determined that certain penetrating fasteners of the main and center fuel tanks were not adequately sealed against fault currents induced by short circuits or lightning strikes, and that certain other fasteners of the center fuel tank had not been sealed during production. During a short circuit event or lightning strike, damaged wires could cause electrical arcing on the fuel tank boundary structure or conduct electrical current to unsealed fasteners that penetrate the fuel tanks, which could create arcing inside the fuel tanks. This condition, if not corrected, could result in a fire or explosion.

Relevant Service Information

We have reviewed the following service information:

- Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006 (applicable to Model 777–200, –200ER, –300, and –300ER airplanes), which describes procedures for installing Teflon sleeving under the clamps of the power feeder wire bundles routed along certain fuel tank boundary structure and for cap sealing selected fasteners of the main and center fuel tanks;
- Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006 (applicable to Model 777–200 and –300 airplanes), which describes procedures for cap sealing the spoilers numbers 5 and 10 outboard hinge fitting fasteners in the main fuel tanks; and
- Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006 (applicable to Model 777–200, –300, and –300ER airplanes), which describes procedures for cap sealing certain fasteners in the center fuel tanks that were not sealed during production.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Model Number Reference

Although Alert Service Bulletin 777–57A0050 refers to ''Model 777–200ER'' airplanes, this is a European designation that does not apply to airplanes of U.S. registry. Therefore, the applicability of this proposed AD will not specify Model 777–200ER airplanes. However, U.S. operators should take any reference to Model 777–200ER airplanes in Alert Service Bulletin 777–57A0050 as applicable to Model 777–200 airplanes as designated by the type certificate data sheet.

Costs of Compliance

There are about 446 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 123 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD at an estimated labor rate of $80 per work hour.

ESTIMATED COSTS FOR AIRPLANES OF U.S. REGISTRY

Airplane group	Work hours	Parts cost	Cost per airplane	Number of airplanes	Fleet cost
Group 1	278	$2,241	$24,481	19	$465,139
Group 2	358	2,241	30,881	104	3,211,624

Currently, there are no affected Group 3 airplanes on the U.S. Register. However, if a Group 3 airplane is imported and placed on the U.S. Register in the future, the required actions would take about 480 work hours, at an average labor rate of $80 per work hour. Required parts would cost about $2,241. Based on these figures, we estimate the cost of this AD to be $40,641 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –300, and –300ER series airplanes, certificated in any category; as identified in the service bulletins specified in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

Boeing Alert Service Bulletin—	Revision level—	Dated—
777–57A0050	Original	January 26, 2006.
777–57A0051	Original	May 15, 2006.
777–57A0057	Original	August 7, 2006.

Note 1: Although Alert Service Bulletin 777–57A0050 refers to ''Model 777–200ER'' airplanes, this is a European designation that does not apply to airplanes of U.S. registry. Therefore, the applicability of this AD will not specify Model 777–200ER airplanes. However, U.S. operators should take any reference to Model 777–200ER airplanes in Alert Service Bulletin 777–57A0050 as applicable to Model 777–200 airplanes as designated by the type certificate data sheet.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Corrective Actions

(f) Within 60 months after the effective date of this AD, install Teflon sleeving under the clamps of the wire bundles routed along the fuel tank boundary structure, and cap seal certain penetrating fasteners of the fuel tanks as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletins specified in Table 1 of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on January 18, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1321 Filed 1–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–000]

Standards of Conduct for Transmission Providers

January 18, 2007.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The purpose of this Notice of Proposed Rulemaking is to propose permanent regulations regarding the standards of conduct consistent with the decision of the United States Court of Appeals of the District of Columbia in *National Fuel Gas Supply Corporation* v. *FERC,* 468 F.3d 831 (2006), regarding natural gas pipelines. On January 9, 2007, the Commission issued an interim rule regarding the standards of conduct in response to the court's decision. The Commission is soliciting comments regarding whether or not the interim rule should be made permanent for natural gas transmission providers. The Commission is also soliciting comments regarding comparable changes for electric utility transmission providers: specifically, whether or not the standards of conduct should govern the relationship between electric utility transmission providers and their energy affiliates. Also, the Commission is proposing to: revise the definition of marketing, sales or brokering; make permanent the changes adopted in the interim rule for risk management employees and discretionary waivers; remove the regulations that permit the transmission provider to share information necessary to maintain the operations of its transmission system with its energy affiliates; add and revise various regulations to facilitate integrated resource planning and competitive solicitations; revise the regulations to require each transmission provider to post the name of its chief compliance officer, to delete outdated references, and to require that transmission provider employees certify that they have completed standards of conduct training; and, revise the definition of affiliate regarding exempt wholesale generators.

DATES: Comments must be filed on or before March 15, 2007. Reply comments must be filed on or before April 4, 2007.

ADDRESSES: You may submit comments identified by Docket No. RM07–1–000, by one of the following methods:

- Agency Web Site: *http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Eric Ciccoretti, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8493, E-mail: *eric.ciccoretti@ferc.gov.*
Deme Anas, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8178, E-mail: *demetra.anas@ferc.gov.*
Stuart Fischer, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8517, E-mail: *stuart.fischer@ferc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is proposing to adopt standards of conduct regulations that govern the relationship between natural gas transmission providers and their marketing affiliates in light of the decision of the United States Court of Appeals for the District of Columbia Circuit concerning the standards of conduct for transmission providers under Order No. 2004.[1] In *National Fuel Gas Supply Corporation* v. *FERC (National Fuel)*,[2] the court determined that the Commission did not support the standards of conduct's definition of energy affiliate and vacated Order Nos. 2004, 2004–A, 2004–B, 2004–C and 2004–D (collectively referred to as Order No. 2004) as applied to natural gas pipelines and remanded the orders to the Commission.[3] Specifically, the court rejected the Commission's attempt to extend the standards of conduct beyond pipelines' relationships with their marketing affiliates to also govern pipelines' relationships with numerous non-marketing affiliates, such as producers, gatherers, and local distribution companies (energy affiliates). In light of this, the court found moot the other issues raised on appeal.[4]

2. On January 9, 2007, the Commission issued an interim rule that promulgated temporary regulations consistent with the court's decision, but designed to prevent a regulatory gap with respect to standards of conduct for natural gas transmission providers and their marketing affiliates.[5] The purpose of this Notice of Proposed Rulemaking (NOPR) is to propose permanent regulations consistent with the court's decision regarding natural gas pipelines. The Commission is also soliciting comments regarding whether or not to make comparable changes for electric utility transmission providers. With respect to both industries, the Commission seeks evidence regarding the scope of the rules, including application of the rules to energy affiliates. This issuance will provide a forum to develop the appropriate record for any future action. Moreover, because we are initiating a rulemaking proceeding, the Commission also takes this opportunity to propose additional changes to the standards of conduct, including, among other things, proposing provisions to facilitate integrated resource planning and competitive solicitations for electric utility transmission providers.

3. In this NOPR, the Commission proposes to make permanent the interim regulations that made the standards of conduct inapplicable to the relationship between natural gas pipeline transmission providers and their energy affiliates. The Commission also proposes to: (1) To revise the definition of marketing, sales or brokering at § 358.3(e) of the Commission's regulations; (2) make permanent the changes adopted in the interim rule for § 358.4(a)(6) of the Commission's regulations regarding risk management employees and §§ 358.5(c)(4)(i) and (ii) of the Commission's regulations regarding discretionary waivers; (3) remove § 358.5(b)(8) of the Commission's regulations, which permits the transmission provider to share information necessary to maintain the operations of its transmission system with its energy affiliates; (4) add and revise various sections to facilitate integrated resource planning and competitive solicitations; (5) revise § 358.4(e) of the Commission's regulations to require each transmission provider to post the name of its chief compliance officer, to delete outdated references, and to require that transmission provider employees certify that they have completed standards of conduct training; and (6) revise the definition of affiliate regarding exempt wholesale generators at § 358.3(b)(2) of the Commission's regulations.

A. Order No. 2004

4. Prior to Order No. 2004, the Commission had two separate sets of regulations governing standards of conduct for transmission providers. The regulations applicable to natural gas pipelines were issued in Order No. 497 in 1988,[6] under sections 4 and 5 of the Natural Gas Act.[7] In 1996, the Commission issued Order No. 889,[8] which created standards of conduct regulations applicable to electric utilities under sections 205 and 206 of the Federal Power Act.[9] Both rules had the same goal—to prevent transmission providers from wielding their market power over transmission to give undue preference or unduly discriminatory treatment in favor of their marketing affiliates over non-affiliates. Both rules employed the same general approach, *e.g.*, requiring employees engaged in transmission services to function independently from employees of its marketing affiliates and imposing prohibitions restricting transmission providers from sharing certain information with their marketing affiliates. The rules were designed to ensure that affiliated and non-affiliated transmission customers were treated on an equal basis. However, the standards of conduct under Order Nos. 497 and 889 contained some differences, particularly with respect to the

[1] On November 25, 2003, the Commission added Part 358 to the regulations adopting standards of conduct that apply uniformly to natural gas and electric utility transmission providers. *Standards of Conduct for Transmission Providers,* Order No. 2004, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,155 (2003), *order on reh'g*, Order No. 2004–A, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,161 (2004), *order on reh'g*, Order No. 2004–B, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,166 (2004), *order on reh'g*, Order No. 2004–C, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,172, *order on reh'g*, Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *remanded as it applies to natural gas pipelines, National Fuel Gas Supply Corporation* v. *FERC,* 468 F.3d 831, (D.C. Cir. Nov. 17, 2006).

[2] *National Fuel,* slip op. at 4.

[3] *Id.*

[4] *Id.*

[5] *Standards of Conduct for Transmission Providers,* Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,327 (Jan. 9, 2007).

[6] *Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines,* Order No. 497, 53 FR 22139 (1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on reh'g,* 54 FR 52781 (1989), FERC Stats & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (1991), *reh'g denied,* 57 FR 5815 (1992), 58 FERC ¶ 61,139 (1992); *aff'd in part and remanded in part sub nom. Tenneco Gas* v. *FERC,* 969 F.2d 1187 (D.C. Cir. 1992).

[7] 15 U.S.C. 717c and 717d; see also former 18 CFR part 161 (2003).

[8] *Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct,* Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles Jan. 1991–June 1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g,* 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied,* 62 FR 64715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (Nov. 25, 1997).

[9] 16 U.S.C. 824d and 824e; see also former 18 CFR 37.4 (2003).

information sharing prohibitions and posting requirements.

5. In Order No. 2004, the Commission revised the standards of conduct so that one set of regulations applied uniformly to both natural gas and electric utility transmission providers and their affiliates.[10] In doing so, the Commission noted several reasons for issuing new standards of conduct.[11] In Order No. 2004, the Commission also expanded the coverage of the standards of conduct to govern the relationships between transmission providers and energy affiliates.[12] Previously, the standards of conduct governed the relationships between transmission providers and their marketing affiliates.[13]

B. Matters Appealed

6. Five issues were appealed from Order No. 2004: (1) The extension of the standards of conduct to cover the relationship between natural gas transmission providers and their energy affiliates under § 358.3(d); (2) the scope of the restrictions on sharing risk management employees between natural gas pipeline transmission providers and their marketing/energy affiliates under § 358.4(a)(6); (3) the scope of the restrictions on sharing lawyers between natural gas pipeline transmission providers and their marketing/energy affiliates; (4) the scope of the requirement for natural gas pipeline transmission providers to post all discretionary acts under § 358.5(c)(4); and (5) the timing as to when newly certificated pipelines become subject to the standards of conduct.

C. The Court's Decision

7. In *National Fuel,* the court vacated Order No. 2004 as applicable to natural gas pipelines because of the expansion of the standards of conduct to include energy affiliates. The court explained that the Commission relied on both theoretical grounds and on record evidence to justify this expansion. The court concluded that the Commission's record evidence did not withstand scrutiny and, thus, concluded the expansion was arbitrary and capricious in violation of the Administrative Procedure Act.[14] The court vacated Order No. 2004 as applicable to natural gas pipelines. In light of this disposition, the court did not address the other four issues raised on appeal regarding Order No. 2004.

II. Discussion

8. The NOPR proposes to make changes to Part 358 (discussed in greater detail below) consistent with *National Fuel,* seeks comment on other issues, and clarifies that waivers or exemptions that the Commission issued under Order No. 2004 remain valid and are not negatively impacted by the *National Fuel* decision.

A. Partially Repromulgating Part 358

9. Order No. 2004 codified many case-by-case exceptions that had evolved during the implementation of Order Nos. 497 and 889. These provisions included: codifying exceptions to the independent functioning requirement;[15] revising information sharing prohibitions to reflect practical considerations [16] and emergency circumstances;[17] codifying a training requirement;[18] revising and imposing new posting requirements to improve transparency;[19] and requiring transmission providers to designate a chief compliance officer.[20] The NOPR proposes to re-adopt those sections of Part 358 that were not appealed and not found infirm in *National Fuel.*

B. The Definition of Energy Affiliates

10. Because the court's decision focused on the Commission's lack of evidence to support expanding the standards of conduct to govern the relationship between natural gas transmission providers and their non-marketing affiliates, the interim rule added a new provision stating that the standards of conduct do not govern the relationship between natural gas transmission providers and their energy affiliates.[21] In this NOPR, consistent with the court's decision, the Commission proposes to retain this provision on a permanent basis for natural gas transmission providers. We seek comment on whether this is sufficient to protect customers.

11. The Commission also is seeking comment on the current restrictions relating to energy affiliates of electric utility transmission providers. The court in *National Fuel* did not address this issue because electric utility transmission providers did not appeal Order No. 2004. However, the Commission believes it is important to address the issue here.

12. The Commission has reviewed the existing regulations, the rationale for promulgating them, and other modifications being discussed herein concerning whether or not to eliminate the restrictions on energy affiliates of electric utility transmission providers. If we were to eliminate these restrictions, the non-marketing energy affiliates of electric transmission providers would no longer be subject to the standards of conduct. However, since we have not yet received comments on the issue or engaged in outreach, this NOPR does not suggest regulatory text on this issue. We intend to carefully examine any comments received on this issue and weigh them heavily in our deliberations on a Final Rule.

13. When the Commission adopted the definition of energy affiliate in Order No. 2004, the Commission focused most closely on examples of the potential for undue discrimination in favor of energy affiliates of natural gas pipelines, rather than of electric utility transmission providers.[22] Although the Commission noted certain violations of Order No. 889 by electric utility transmission providers,[23] these instances involved undue preferences given to an electric transmission provider's merchant function. As we discuss further below, the definition of marketing affiliate expressly includes an electric transmission provider's merchant function and the Commission sees no reason to delete that important protection.[24] Furthermore, in an area where the Commission made findings of undue discrimination that was not covered by Order No. 889—undue preferences given to asset managers—we are proposing, as discussed below, to broaden the definition of marketing affiliate so that the standards of conduct explicitly prohibit such undue preferences.

14. Over the past three years, the Commission has engaged in extensive outreach and consultation with the industry regarding the standards of

[10] 18 CFR 358.3(a)(1) and (2) (definition of transmission provider).

[11] Order No. 2004 at P 6–15.

[12] Section 358.3(d) defined energy affiliate as any affiliate which is engaged or involved in transmission transactions; manages or controls pipeline capacity; buys, sells, trades or administers natural gas or electric energy in domestic energy or transmission markets; and engages in financial transactions relating to the sale or transmission of natural gas or electric energy in such markets. 18 CFR 358.3(d).

[13] Under Order No. 497, marketing included affiliates and business divisions engaged in making sales for resale of natural gas in interstate commerce (former 18 CFR 161.2(c)); and under Order No. 889, marketing covered affiliates and business divisions engaged in making sales for resale of electric energy in interstate commerce (former 18 CFR 37.3(e)).

[14] *National Fuel,* slip op. at 4.

[15] 18 CFR 358.4.

[16] 18 CFR 358.5(b)(6) and (8).

[17] 18 CFR 358.4(a)(2).

[18] 18 CFR 358.4(e)(5).

[19] 18 CFR 358.5(a) and (b).

[20] 18 CFR 358.4(e)(6).

[21] Interim 18 CFR 358.1(e) states: ''The Standards of Conduct in this part do not govern the relationship between a natural gas Transmission Provider and its energy affiliates.''

[22] Order No. 2004 at P 10–11.

[23] Order No. 2004 at P 14.

[24] 18 CFR 358.3(c)(2).

conduct. This outreach has included three public technical conferences (held in Houston, Chicago, and Scottsdale, Arizona) and numerous meetings between industry participants and our staff. Over the course of this outreach, we have received information and comments on many important issues arising under the standards of conduct. However, this outreach did not cover the issue addressed here—energy affiliate restrictions for electric utility transmission providers. Accordingly, the Commission seeks comment on whether applying the standards of conduct to the relationship between electric utility transmission providers and their marketing affiliates, but not to their energy affiliates would be sufficient to protect customers. Commenters who believe that it is appropriate to retain the standards of conduct for the relationship between electric utility transmission providers and their energy affiliates should submit evidence to support continued application of the definition of energy affiliates to electric utility transmission providers. Commenters who believe that we should not apply the standards of conduct to the relationship between electric utility transmission providers and their energy affiliates should provide support for their position that customers will be sufficiently protected from undue discrimination.

15. Commenters should include a focus on the type of energy affiliate that they are discussing. Making the standards of conduct inapplicable to electric utility transmission providers and their energy affiliates would affect the relationship between a transmission provider and the following types of non-marketing energy affiliates (except as otherwise noted):

a. Affiliated asset managers; [25]

b. Affiliated transmission customers that do not make sales for resale; [26]

c. Affiliated gas entities, *e.g.*, affiliated producers, affiliated gatherers, affiliated gas Local Distribution Companies (LDCs), and affiliated intrastate pipelines;

d. Affiliated financial institutions that do not engage in physical transactions, but only financial transactions; [27]

e. Affiliated entities that aggregate and re-sell transmission capacity without making sales for resales of energy; [28]

f. Affiliated electric LDCs; [29]

g. Affiliated electronic trading platforms; [30] and,

h. Affiliated entities that buy, trade or administer electric energy.[31]

The Commission seeks comments on whether the standards of conduct should continue to apply to these relationships.

16. In addition, the Commission seeks comment, particularly from companies subject to both sets of standards, on whether it is desirable to maintain consistency between the standards of conduct applicable to natural gas transmission providers and electric utility transmission providers. We note that retaining the energy affiliate restriction for electric transmission providers, but not for natural gas transmission providers, would create, for some companies, inconsistent rules for different subsidiaries within a holding company. For example, an energy affiliate of an electric utility transmission provider would be restricted in communicating with that transmission provider, but if a natural gas transmission provider owned that same energy affiliate there would be no such restriction. Similarly, if a holding company owned both electric utility and natural gas transmission providers, two differing sets of rules would apply within the same holding company system. The electric transmission provider would be precluded from dealing with all energy affiliates in that system, whereas the natural gas pipeline company would not. Uniformity could lessen the compliance burden on the industry and ease oversight of compliance by the Commission staff, but the Commission recognizes that uniformity does not override the Commission's mandate for customer protection.

17. Under the Natural Gas Act and the Federal Power Act, the Commission has the statutory mandate to prevent and remedy undue discrimination.[32] Even absent the standards of conduct regulations promulgated under that authority, the Commission has the authority to prevent and remedy a transmission provider's undue preference or advantage granted in favor of its affiliates. If a transmission provider provides an undue preference or advantage in favor of an affiliate that is not covered by the standards of conduct, that undue preference may still be prohibited by the Natural Gas Act or Federal Power Act.

18. We are not disturbing the fundamental protections to consumers and competitors of electric transmission providers that were adopted in Order No. 889 and retained in Order No. 2004. It will continue to be unlawful for electric utility transmission providers to provide any undue preference to their merchant function or any affiliate that owns generation or sells electricity. These are the core protections that customers and competitors have long supported and that we retain here. It also will continue to be unlawful for electric transmission providers to provide any undue preference to an affiliate selling or trading natural gas. Each of these protections is covered explicitly by the definition of marketing affiliate and is left undisturbed.

C. Revising the Definition of Marketing, Sales or Brokering

19. The interim rule adopted a temporary regulation for natural gas pipeline transmission providers at § 358.3(l) that mirrored the exceptions to the definition of marketing that were found in Order No. 497.[33] Accordingly, marketing means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except when: (1) The seller is selling gas solely from its own production; (2) the seller is selling gas solely from its own gathering or processing facilities; or (3) the seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale. The NOPR proposes to remove the interim regulation codified at § 358.3(l) and incorporate those

[25] *See* 18 CFR 358.3(d)(1) (''involved in transmission transactions''). Below, the Commission proposes to separately make the relationship between transmission providers and asset managers subject to the standards of conduct by expanding the definition of marketing affiliate.

[26] *See* 18 CFR 358.3(d)(1) (''engages in * * * transmission transactions''); Order No. 2004–A at P 44.

[27] *See* 18 CFR 358.3(d)(4).

[28] *See* 18 CFR 358.3(d)(1).

[29] *See* 18 CFR 358.3(d)(5); Order No. 2004–C at P 24–25.

[30] *See* 18 CFR 358.3(d)(1); Order No. 2004–A at P 4.

[31] *See* 18 CFR 358.3(d)(3) (''buys, sells, trades or administers electric energy''). The Commission believes that the relationship with affiliates that make wholesale sales of electric energy in interstate commerce is governed by the definition of marketing. *See* 18 CFR 358.3(k).

[32] Sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and 717e, state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. Similarly, under sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e, no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.

[33] Interim 18 CFR 358.3(l) states:

Marketing or brokering means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except when:

(1) the seller is selling gas solely from its own production;

(2) The seller is selling gas solely from its own gathering or processing facilities; or

(3) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

exceptions in the definition of ''Marketing, sales or brokering'' for natural gas transmission providers currently located at § 358.3(e).

20. The electric utility and natural gas industries differ in certain respects that are relevant to the energy affiliate issue. The Commission is proposing, consistent with the National Fuel decision, to revise the definition of marketing affiliate to include certain exceptions that were adopted in Order No. 497, but deleted in Order No. 2004. These exceptions would remove standards of conduct restrictions for a natural gas pipeline with respect to an affiliate's sales of gas from its own production, gathering or processing facilities. However, sales of electricity from a transmission provider's own ''production'' facilities—*i.e.*, the generating plants operated by its merchant function—were already covered in Order No. 889 and, hence, Order No. 2004 did not represent a change in this regard. Thus, we do not propose to disturb this longstanding customer protection, and will therefore retain the Order No. 2004 definition of marketing affiliate that explicitly covers an electric utility transmission provider's merchant function. We also note that the gathering and processing exceptions are also inapplicable to electric utility transmission providers and, hence, require no comparable change. We seek comment on these revised definitions of marketing affiliate for natural gas and electric transmission providers.

21. The Commission also is proposing to expand the definition of marketing, sales or brokering to include entities that manage or control transmission capacity, such as asset managers or agents.[34] Frequently, asset managers and agents are involved extensively in transmission transactions, they stand in the shoes of the transmission customer and act as nominating/balancing agent, and have access to all the transmission customer's transmission information.[35] The Commission is proposing to include asset managers/agents within the definition of marketing based on information gathered during investigations by the Commission's Enforcement staff. In each of these matters, staff investigated, among other issues, asset managers/agents that were also marketing affiliates and whether the asset managers received an undue preference from their affiliated transmission providers. All of these matters concluded with settlements approved by the Commission, including the payment by American Electric Power Company, Inc. (AEP) of $21 million, the largest civil penalty in Commission history,[36] and the payment by Cleco Corporation of the largest civil penalty under section 214 of the Federal Power Act.[37] The third settlement, involving South Carolina Electric and Gas Company (SCEG), resulted in SCEG agreeing to a compliance plan.[38] Because these investigations were resolved by settlements, the Commission never made any specific findings that asset managers/agents and their affiliates engaged in undue discrimination. Still, the activities identified by staff provide a sufficient basis for the Commission to propose to include asset managers/agents in the definition of marketing affiliates. That is the case even though the settled investigations involved asset managers who were also marketing affiliates. However, a review of the voluntary consent postings [39] on several transmission providers' OASIS and Internet Web sites shows that sometimes asset managers are marketing affiliates, but that sometimes they are not.[40]

22. The Commission believes that the standards of conduct should govern the relationship between transmission providers and their affiliated asset managers. It would likely be unduly discriminatory to permit a transmission provider to inform its affiliated asset manager about an upcoming curtailment or outage, unless all other non-affiliated asset managers or transmission customers have comparable access to that information. Including affiliated asset managers/agents in the definition of marketing would ensure that all asset managers are treated in a comparable fashion. The Commission is soliciting comments on whether to include this provision in the definition of marketing and encourages commenters to identify potential harm of including or not including asset managers/agents in the definition of marketing. For that purpose, proposed § 358.3(e) reads as follows:

Marketing, sales or brokering means a sale for resale of natural gas or electric energy in interstate commerce in U.S. energy or transmission markets. Marketing also includes managing or controlling transmission capacity of a third-party as an asset manager or agent.

(1) A sales and marketing employee or unit includes:

(i) An interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and

(ii) An electric public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.

(2) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(3) Marketing means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except where:

(i) The seller is selling gas solely from its own production;

(ii) The seller is selling gas solely from its own gathering or processing facilities; or

(iii) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

D. Exceptions to the Independent Functioning Requirement—Risk Management Employees and Lawyers

23. Section 358.4 requires, except in emergency circumstances, the transmission function employees [41] of the transmission provider to function independently of the marketing affiliates' employees. Notwithstanding

[34] Generally, asset managers manage or control gas or electric assets, often including a transmission customer's capacity. Agents frequently are authorized to act in the place of transmission customers with respect to specified transmission-related activities such as nominations, scheduling or billing.

[35] In the investigation of Cleco Corporation, Commission staff observed that corporation's asset manager performed the following services for Cleco Corporation: (1) Transmission scheduling services; (2) resource coordination and delivery of power trading and ancillary services; (3) fuel purchases for generation use; (4) marketing and customer relations services; (5) commodity trading; (6) monitoring, energy management, scheduling, dispatch and accounting and billing services; (7) interaffiliate billing; (8) retail and wholesale marketing; and (9) energy trading. Cleco Corporation, 104 FERC ¶ 61,025 (2003) (Cleco).

[36] *American Electric Power Company, Inc.*, 110 FERC ¶ 61,061 (2005).

[37] *See Cleco, supra* note 35.

[38] *South Carolina Electric & Gas Company*, 111 FERC ¶ 61,217 (2005).

[39] Currently, 18 CFR 358.5(b)(4) requires a transmission provider to post notice if a non-affiliated transmission customer voluntarily consents, in writing, to allow the transmission provider to share the non-affiliated transmission customer's information with a marketing or energy affiliate. 18 CFR 358.5(b)(4).

[40] For example, El Paso Natural Gas Company's voluntary consent postings on its Internet Web site identify that non-affiliated customers have voluntarily consented to allow El Paso to disclose their respective information to El Paso's marketing and energy affiliates, *e.g.*, El Paso Field Services, L.P. (an energy affiliate) and El Paso Marketing L.P. (a marketing affiliate.) *http://tebb.epenergy.com/ebbepg/notices/noticeView.asp?sPipelineCode=EPNG&sSubC* (Dec. 8, 2006). Similar notices of asset management agreements or agency agreements can be found at the voluntary consent links of the OASIS or Internet Web sites for National Fuel Gas Supply Corp., Texas Eastern Transmission, LP, Tennessee Gas Pipeline Company, Potomac Electric Power Company, and Dominion Transmission Inc.

[41] Section 358.3(j) of the Commission's regulations currently defines transmission function employee as an employee, contractor, consultant or agent of a transmission provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

this requirement, since 1988, the Commission has developed a body of case law, permitting certain types of employees to be shared between a transmission provider and its marketing affiliate. At the request of industry participants, Order No. 2004 reiterated these holdings by codifying exceptions to the independent functioning requirement that permit the sharing of officers and members of the board of directors (directors),[42] support employees,[43] field and maintenance employees,[44] and risk management employees.[45] Although industry participants urged the Commission to codify a general exception regarding the sharing of lawyers, the Commission did not do so stating that, if a lawyer participated in transmission policy decisions on behalf of a transmission provider, he or she would be considered a transmission function employee (and hence, not permissibly shared).[46]

24. In describing these exceptions, the Commission stated that the sharing of these non-transmission functions allowed the transmission provider to realize the benefits of cost saving through integration where the shared employees do not have duties or responsibilities relating to transmission, and generally would not be in a position to give a marketing affiliate an undue preference.[47] The Commission also stated that the exception allowing the sharing of officers and directors facilitated corporate governance activities, but that, to the extent a senior officer or director conducts transmission functions or is involved in planning, directing or organizing transmission functions, the officer's or director's status does not automatically exempt him/her from also being a transmission function employee.[48] In Order No. 2004–A, the Commission stated that, although it permitted the sharing of these categories of employees, it would evaluate, in compliance audits and investigations, employees' actual duties to determine whether the transmission provider is appropriately applying the exception.[49] In other words, regardless of an individual's title or how his or her responsibilities are labeled, if that individual is engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations, that individual is a transmission function employee (and may not be permissibly shared).

25. Petitioners appealed the codification of the exception for permissibly shared risk management employees and the preamble discussion in Order No. 2004 regarding permissibly shared lawyers. As mentioned above, in *National Fuel*, the court did not address these matters, and, accordingly, *sub silencio*, invalidated these aspects of Order No. 2004. Accordingly, the Commission is seeking comment on whether to make permanent changes adopted by the interim rule by retaining § 358.4(a)(6).[50] The Commission also seeks comments on whether to make this change applicable to electric public utility transmission providers. The Commission is also seeking comments on whether additional guidance with respect to permissibly shared employees, such as shared risk management employees, lawyers and officers and directors, would be helpful given the different structure, sizes and operations of the various transmission providers.

E. Discretionary Tariff Provision

26. In Order No. 2004, the Commission required each transmission provider to maintain a log detailing the circumstances and manner in which it exercised discretion under any terms of its tariff and post that information on its OASIS or Internet Web site.[51] The regulatory language in Order No. 2004 was substantively identical to the requirement under Order No. 889, but it was different than the requirement under Order No. 497. Former § 161.3(k) promulgated in Order No. 497 required a pipeline to maintain a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request. On appeal, one of the petitioners claimed that § 358.5(c)(4) was broader than former § 161.3(k), arguing that there was a significant difference between granting waivers of tariff provisions that provide for such discretionary waivers (former § 161.3(k)) and exercising discretion under any terms of its tariff (§ 358.5(c)(4)).

27. To comply with the court's mandate in *National Fuel*, the interim rule modified § 358.5(c)(4)(i)[52] so that it only applies to electric transmission providers and added a separate provision for natural gas transmission providers at § 358.5(c)(4)(i) that provides that natural gas transmission providers must maintain a written log of waivers that the natural gas transmission provider grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request. The purpose of the discretionary waiver posting requirement is to enable transmission customers to determine whether they are similarly situated and potentially entitled to comparable treatment by the transmission provider.

28. As mentioned above, in *National Fuel*, the court did not address this matter, and, accordingly, *sub silencio*, invalidated this aspect of Order No. 2004. The Commission is faced with making permanent this requirement for electric transmission providers, while having different requirements for natural gas transmission providers. Accordingly, the Commission is seeking comment on whether to make permanent changes adopted in the interim rule by retaining §§ 358.5(c)(4)(i) and (ii) and seeking suggestions on what type of requirement is appropriate to give similarly situated customers sufficient information to determine whether they are being treated in a non-discriminatory fashion with respect to a transmission provider's discretionary activities. The Commission also encourages commenters to include suggestions on how we can craft the scope of the discretionary waiver requirement to minimize the burden on transmission providers while balancing the need for transparency in the market.

F. Timing of When a New Natural Gas Transmission Provider Becomes Subject to the Standards of Conduct

29. Under Order No 497, a natural gas transmission provider became subject to the standards of conduct when the transmission provider commenced transportation transactions with its marketing or brokering affiliate.[53] In the preamble of Order No. 2004, the Commission stated that newly

[42] 18 CFR 358.4(a)(5).

[43] 18 CFR 358.4(a)(4).

[44] 18 CFR 358.4(a)(4).

[45] 18 CFR 358.4(a)(6).

[46] Order No. 2004–A at P 157.

[47] Order No. 2004 at P 97.

[48] Order No. 2004–B at P 57.

[49] Order No. 2004–A at P 134.

[50] Interim 18 CFR 358.4(a)(6) reads: ''Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity functions with their Marketing and Energy Affiliates. This provision does not apply to natural gas transmission providers.''

[51] 18 CFR 358.5(c)(4).

[52] Section 358.5(c)(4)(i) provides that Electric Transmission Providers must maintain a written log, available for Commission audit, detailing the circumstances and manner in which they exercised their discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet Web site within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff. 18 CFR 358.5(c)(4)(i).

[53] Former 18 CFR 161.1 (2003).

certificated transmission providers would become subject to the standards of conduct when the transmission providers begin soliciting business or negotiating contracts as those are activities which the Commission considers transmission function activities. In Order No. 2004–B, the Commission stated that a new interstate pipeline should observe the standards of conduct when the pipeline is granted and accepts a certificate of public convenience and necessity and becomes subject to the Commission's jurisdiction under the Natural Gas Act.[54] The Commission stated that its goal was to ensure that newly formed pipelines provide non-discriminatory treatment and limit their ability to unduly favor their marketing and energy affiliates.[55] The timing of applicability of the standards of conduct was one of the items appealed, but not addressed in the *National Fuel* decision and vacated *sub silencio*. In the interim rule, the Commission did not require natural gas transmission providers to observe the standards of conduct until they commence transportation transactions with their marketing affiliates.

30. The issue on appeal was whether the Commission could apply the standards of conduct to a holder of a certificate that has not yet commenced transportation of natural gas. The Commission does not have any evidence that affiliate abuse has occurred in the time period before transportation commences, but believes there is clearly an incentive for the transmission provider to give an undue preference to its affiliates. A transmission provider must observe the non-discrimination provisions of sections 4 and 5 of the Natural Gas Act (and sections 205 and 206 of the Federal Power Act). The Commission seeks comment on when a transmission provider should be required to comply with the standards of conduct and is proposing the following modification to § 358.4(e)(2).

Each Transmission Provider must be in full compliance with the standards of conduct within 30 days of becoming subject to the Commission's jurisdiction.

G. Revising § 358.5(b)(8)

31. Currently, § 358.5(b)(8) states that a transmission provider is permitted to share information necessary to maintain the operations of the transmission system with its energy affiliates. In the Order No. 2004 proceeding, natural gas commenters asked the Commission to adopt a provision allowing communication of operational information with energy affiliates, such a producers, gatherers or LDCs. They argued that prohibiting the sharing of operational information might endanger the reliability of the gas transmission systems.[56] Accordingly, Order No. 2004 codified current § 358.5(b)(8). In Order No. 2004, the Commission provided additional clarification explaining that this provision permits a transmission provider to share day-to-day, operational-type information with interconnected energy affiliates necessary to maintain the pipelines' operations, such information includes confirmations, nominations and schedulers with upstream producers and gathering facilities, operational data relating to interconnection points and communications related to the maintenance of interconnected facilities. The Commission added that it expected that these types of communications would take place between the operators of the pipeline or gas control facilities.[57] As the Commission is proposing that the standards of conduct will no longer govern the relationship between natural gas transmission providers and their energy affiliates, it appears that this provision is no longer necessary because communications between a natural gas transmission provider and its affiliated/interconnected gatherer(s), producer(s) and LDCs are not restricted by the standards of conduct. Therefore, the Commission proposes to delete § 358.5(b)(8) from the regulations and seeks comments on this proposal.

H. Changes To Facilitate Integrated Resource Planning and Competitive Solicitations

32. Since Order No. 2004 was issued, industry participants have sought staff guidance on standards of conduct requirements to assist with their compliance efforts. To provide further guidance, the Commission held three standards of conduct technical conferences, the most recent being held on April 7, 2006, and staff posted a ''Frequently Asked Questions'' (FAQs) page on the Commission's Internet Web site. Following the April 7, 2006 technical conference, staff began a series of outreach meetings with various industry participants, including public utilities, industry trade associations and state commissions, to discuss ways for the Commission to address the applicability of the standards of conduct in the context of business activity that the Commission did not address in Order No. 2004, such as integrated resource planning and competitive solicitations.

33. To address integrated resource planning and competitive solicitations, the Commission proposes to make changes to the standards of conduct intended to make public utilities[58] integrated resource planning and procurement more accurate and efficient, particularly in their consideration of electric transmission. The standards of conduct apply to ''any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce,'' but do not apply to independent system operators (ISOs) or regional transmission organizations (RTOs).[59] In conducting integrated resource planning, a public utility evaluates its current and future mix of generation, transmission, demand-side management and other resources to meet future demand while minimizing costs, ensuring reliability, and complying with a state's environmental requirements. As an example, integrated resource planning may help a public utility or state commission choose to meet load growth through the addition of a new generation resource, a new demand resource, or through new transmission resources. There is a wide variety of methods for conducting integrated resource planning. Some states require public utilities to periodically submit an integrated resource plan. Such submissions are typically subject to some review and comment by the public and review and approval by the applicable state commission.

34. The Commission believes that improved coordination between transmission planning, generation planning and demand response programs, which are the main elements of integrated resource planning, is

[54] Order No. 2004–B at P 136.

[55] Order No. 2004–C at P 46.

[56] For electric transmission providers, a provision allowing communications relating to generation dispatch exists at 18 CFR 358.5(b)(6) of the Commission's regulations.

[57] Order No. 2004–A at P 203.

[58] Under section 201(e) of the Federal Power Act, a public utility is ''any person who owns or operates facilities subject to the jurisdiction of the Commission.'' 16 U.S.C. 824(e). The standards of conduct apply to a public utility that is a transmission provider, which is defined as ''any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce'' in addition to certain interstate natural gas pipelines. 18 CFR 358.3(a).

[58] Under section 201(e) of the Federal Power Act, a public utility is ''any person who owns or operates facilities subject to the jurisdiction of the Commission.'' 16 U.S.C. 824(e). The standards of conduct apply to a public utility that is a transmission provider, which is defined as ''any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce'' in addition to certain interstate natural gas pipelines. 18 CFR 358.3(a).

necessary to improve the economics and reliability of the transmission grid. In the next several years, reliability concerns are expected to grow as transmission investment has lagged behind load growth.[60] As recently stated by North American Electric Reliability Council (NERC), ''[b]ulk power system reliability and adequacy depends on close coordination of generation and transmission planning and demand response programs.'' [61] The Commission also understands that some states are requiring greater consideration of transmission in public utilities' integrated resource planning. In consideration of these developments, the Commission seeks to ensure that the evaluation of transmission in public utilities' planning and procurement is as accurate and efficient as possible. The Commission proposes to create a category of employees under the standards of conduct, ''planning employees,'' who are permitted to engage in all aspects of ''integrated resource planning'' for bundled retail load, to receive non-public transmission information, and to interact with transmission function employees, provided that the integrated resource planning is conducted pursuant to state mandate.

35. The Commission also understands that transmission concerns are becoming a greater factor in resource procurement. A public utility's integrated resource plan often serves as the road map for the public utility's resource procurement. For instance, a public utility may present an integrated resource plan that specifically calls for long-term procurement of a certain type of energy resource through a competitive solicitation. Such competitive solicitations may also be subject to state review and, if they result in the award of long-term contract to an affiliate, review by the Commission.[62] The Commission understands the importance of ensuring that the evaluation of transmission in procurement is as accurate and efficient as possible. The Commission also proposes to create a category of employees under the standards of conduct, ''competitive solicitation employees,'' who are permitted to conduct competitive solicitations intended to serve bundled retail load, and to receive non-public transmission information and to interact with transmission function employees in order to evaluate proposals submitted in a competitive solicitation.

36. These Commission proposals to relax the standards of conduct to facilitate integrated resource planning and competitive solicitations are consistent with the treatment of bundled retail load in the standards of conduct as outlined in Order No. 2004. The standards of conduct exempt from the definition of marketing affiliate employees, those employees involved ''solely in bundled retail sales.'' [63] As such, bundled retail sales employees are not subject to the standards of conduct in most respects. In an extension of this policy, the Commission's proposals are restricted to integrated resource planning for, and competitive solicitations to procure supply to serve, bundled retail load.

37. In proposing to facilitate integrated resource planning and competitive solicitations through changes to the standards of conduct, the Commission is mindful of the goal of the standards of conduct to prevent undue preferences, specifically by preventing transmission providers from providing unduly preferential treatment to their marketing and energy affiliates. Thus, the Commission will place restrictions on both planning employees and competitive solicitation employees in order to prevent those employees from providing an undue preference to the transmission provider's marketing and energy affiliates. The Commission seeks to strike a balance between the goal of diminishing opportunities for undue preferences with the goal of improving the efficiency and accuracy of integrated resource planning and competitive solicitations. Along these lines, as discussed below, the Commission seeks comment on whether or not the proposal to limit the new categories of planning employees and competitive solicitation employees to perform their functions only for bundled retail load is necessary to prevent undue discrimination.

1. Integrated Resource Planning—Planning Employees

38. In its outreach regarding integrated resource planning, staff heard a common refrain from public utilities, that the standards of conduct restrict their ability to conduct integrated resource planning because they restrict access to non-public transmission information and restrict transmission function employees from interacting with employees conducting integrated resource planning. Similarly, in its comments on the Open Access Transmission Tariff (OATT) Reform NOPR,[64] the National Association of Regulatory Utility Commissioners called for ''allow[ing] communications between resource and transmission planners for the purpose of developing long-term resource planning documents to satisfy State-commission integrated resource planning requirements.''[65]

39. The information sharing prohibitions of the standards of conduct affect the type of transmission information that planners use to conduct integrated resource planning. Public utilities relying on marketing or energy affiliate employees to perform their integrated resource planning are prohibited from obtaining non-public transmission information from the transmission provider and, instead, use publicly-available information. In staff's outreach sessions, some public utilities raised concerns, for example, that this prohibition precludes long-term planners from obtaining information about generation projects in the interconnection queue, or from obtaining information regarding planned retirements of generation. With incomplete transmission information, public utilities contended, transmission analysis for integrated resource planning is incomplete. As a result, they added, the IRP process is less efficient and more costly, and the resulting integrated resource plan is inferior. Public utilities contended, in effect, that the information sharing prohibitions of the standards of conduct create a gap between the transmission information needed to conduct integrated resource planning and the transmission information available to their employees

[59] 18 CFR 358.1(b).

[60] After an extensive assessment, the NERC recently concluded that ''[e]xpansion and strengthening of the transmission system continues to lag demand growth and expansion of generating resources in most areas.'' NERC, 2006 Long-Term Reliability Assessment, at p. 7 (Oct. 16, 2006). *See also Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43293 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222, at P 10 (July 20, 2006) (citations omitted) (observing that transmission investment has declined while load has doubled), *order on reh'g*, Order No. 679–A, 117 FERC ¶ 61,327 (Dec. 22, 2006).

[61] NERC, 2006 Long-Term Reliability Assessment, at p. 8; *see also id.* at p. 13 (''In the long term, reliable transmission will depend upon the close coordination of generation and transmission planning and construction and the adoption of longer term planning horizons * * *'').

[62] *See, e.g., Southern California Edison on behalf of Mountainview Power Co., LLC*, 106 FERC ¶ 61,183, at P 58 (2004) (setting forth criteria for section 205 review of affiliate sales for contracts of one year or longer), *order on reh'g*, 109 FERC ¶ 61,086, *order on reh'g*, 110 FERC ¶ 61,319 (2005).

[64] *Preventing Undue Discrimination and Preference in Transmission Service,* Docket No. RM05–25–000, 71 FR 32635 (June 6, 2006), 71 FR 39251 (July 12, 2006), FERC Stats. & Regs. ¶ 32,603 (May 19, 2006) (OATT Reform NOPR).

[65] Comments of National Association of Regulatory Utility Commissioners, *Preventing Undue Discrimination and Preference in Transmission Service,* Docket No. RM05–25–000, at p. 12 (filed Aug. 8, 2006).

who conduct integrated resource planning.

40. Public utilities also asserted that the independent functioning requirement of the standards of conduct hinders integrated resource planning because the requirement prohibits planners from working with transmission function employees and taking advantage of their understanding of the transmission system.

41. The Commission seeks comment on whether and how the standards of conduct preclude those who conduct integrated resource planning from obtaining needed transmission information. Commenters should explain what types of information, if any, cannot reach such planners under the current standards of conduct and how such information assists in creating an accurate integrated resource plan. The Commission also seeks comment on whether planning employees would also need access to non-public customer information in addition to non-public transmission information.

42. The Commission proposes to create a new category of employees called ''planning employees'' who would be permitted to direct, organize, and carry out all aspects of integrated resource planning including aspects related to transmission and generation planning. For the purpose of conducting integrated resource planning, planning employees would be permitted to receive non-public transmission information (but not non-public customer information) from the transmission provider and to interact with transmission function employees.[66] In order to allow planning employees to interact with transmission function employees, planning employees would be exempt from the independent functioning requirement. The Commission seeks comment on the creation of this category, including the potential benefit and harm to the market.

43. To ensure that an undue preference is not given to marketing or energy affiliates, the Commission also proposes several restrictions and limitations. As part of this proposal, the Commission would add a definition for the term ''integrated resource planning'' to the standards of conduct, which would serve to describe and delineate the types of resource planning activities in which planning employees could participate. The definition is intended to include all integrated resource planning to serve bundled retail load conducted by public utilities that is mandated by the states. The Commission does not intend to exclude from this definition any state's mandated integrated resource planning to serve bundled retail load.[67]

44. We understand that some public utilities conduct integrated resource planning that is not subject to state review. Under the proposed regulations, if a public utility conducts integrated resource planning that is not required by state mandate, it could not take advantage of the planning employees category. The Commission also seeks comment on this limitation. For example, are there states that do not have an explicit integrated resource planning mandate, but that, nonetheless, review and approve integrated resource plans prepared and submitted by the public utilities?

45. The Commission also proposes to limit the definition of ''integrated resource planning'' to planning that is designed to meet ''future bundled retail load obligations.'' This limitation cabins the work of planning employees to work on bundled retail load obligations and, thereby, precludes them from working on a public utility's other load obligations, such as wholesale load obligations arising from contract. By this limitation, the Commission seeks to ensure that the benefits of this proposal accrue to a public utility in service of its retail customers and not to benefit a utility in competition with other wholesale market participants. We seek comments on whether or not this limitation is necessary to prevent undue discrimination.

46. To further restrict opportunities for planning employees to provide undue preferences to the transmission provider's marketing or energy affiliates, planning employees would be subject to the ''no-conduit rule;'' that is, they could not relay any non-public transmission information received to any marketing or energy affiliate. Planning employees also would be restricted from participating in the sales or purchases of energy, capacity, ancillary services or transmission services to ensure that they did not use their access to transmission information and to transmission function employees to benefit the public utility or its affiliates in transactions with other market participants. In other words, if the integrated resource planning involves bundled retail load and is the result of a state mandate, the planning and the employees conducting it are not subject to all of the usual restrictions of the standards of conduct, although they would be subject to other restrictions outlined here.

47. The Commission seeks comment on whether planning employees should be restricted to planning for bundled retail load or whether they should also be permitted to plan for Provider of Last Resort (POLR) load, grandfathered wholesale requirements contracts, and wholesale full requirements load. Commenters addressing this issue should indicate the type of load for which they conduct integrated resource planning or for which their state requires integrated resource planning, *e.g.*, only for bundled retail load, or for bundled retail load, POLR load, and wholesale requirements load.[68] We note that for purposes of Order No. 888 and the Commission's enforcement practices, we have treated pre-1996, grandfathered wholesale requirements contracts similar to how we have treated bundled retail load.[69] We seek comments on whether or not the Commission should continue this practice for integrated resource planning. Commenters should also address whether the Commission could sufficiently facilitate integrated resource planning by limiting the definition of integrated resource planning in the regulations to planning only for bundled retail load. Commenters should address whether it is more cost-effective and efficient to permit planning employees to conduct integrated resource planning for obligations other than bundled retail sales and what, if any, protections should be put in place to guard against undue preferences to marketing and energy affiliates. Does limiting planning employees to bundled retail sales load unnecessarily divide a utility's integrated resource planning?

48. Under this proposal, public utility transmission providers that no longer have bundled retail load obligations but have POLR obligations because they operate in states that have retail access or retail choice would not be permitted to share non-public transmission

[66] To the extent that transmission function employees disclose non-public transmission information that is not related to integrated resource planning, the transmission provider must observe the posting requirements of 18 CFR 358.5(b)(2).

[67] The Commission also understands that some states refer to integrated resource planning by different terms.

[68] Here, the Commission delineates integrated resource planning by type of load or contract. Staff research indicates that some state regulations do not delineate the scope of their integrated resource planning requirement in the same way. For instance, some states require that a utility conduct integrated resource planning for its ''customers'' without any delineation between wholesale or retail customers. Other states require planning for ''wholesale customers'' without delineation between wholesale requirements customers and other wholesale customers. To assist in clarification of this issue, commenters should delineate precisely the scope of a state's planning requirements.

[69] *Cf.* 18 CFR 35.28(c)(2)(i) and (ii).

information to conduct integrated resource planning.[70] In Order No. 2004–A, the Commission rejected a generic request to treat POLR service obligations under state law as equivalent to a transmission provider's bundled retail sales obligations, which would have exempted POLR service from the definition of marketing affiliate.[71] The Commission also indicated that it would entertain case-by-case requests for exemption of POLR service. In several instances, the Commission has granted requests by transmission providers that, under specific conditions, the POLR service should be accorded the same treatment as bundled retail sales.[72] The Commission seeks comment on whether utilities with POLR service obligations also should be allowed to take advantage of the planning employees category, or whether expanding the category to include POLR service obligations might harm competition or give marketing or energy affiliates an undue preference.

49. Finally, we are concerned that planning employees not be used in a manner that unduly discriminates against non-affiliated wholesale suppliers. Specifically, in permitting planning employees access to non-public transmission information and to transmission function employees, we are concerned that such access could be used to favor utility-owned generation over purchases from non-affiliates. For example, in the IRP process, planning employees could use non-public transmission information to evaluate only self-build options and ignore any consideration of purchases from third parties. Such an action would be inconsistent with the underlying purpose of the proposal, which is to increase the economic use of the grid by allowing planning employees to integrate the consideration of economic alternatives.

50. To address this concern, the Commission proposes to limit the definition of integrated resource planning to instances in which the IRP process includes evaluation of third-party resources. The proposed limit is designed to balance the goal of facilitating least-cost resource procurement with the concern that the planning employees category not be used to discriminate against non-affiliates. We wish to clarify, however, that such a limitation does not mean the Commission intends to supervise or otherwise prescribe the manner in which states consider third-party resources as part of their IRP processes or that the Commission intends a final integrated resource plan to necessarily include third-party resources. The states are in the best position to make those decisions as they are responsible for resource procurement for bundled retail load. Therefore, the Commission will not second-guess the manner in which states evaluate third-party resources; we only require that such resources be considered if a public utility seeks to use the planning employees category.[73]

51. We seek comment on the foregoing restrictions placed on planning employees' activities. In their comments, commenters should address the balance the Commission is trying to achieve between providing planning employees with sufficient access to transmission information and to transmission function employees to conduct accurate and efficient integrated resource planning while at the same time ensuring that such access does not enlarge opportunities for planning employees to provide undue preferences to the transmission provider's marketing or energy affiliates. Thus, commenters who believe that the restrictions go too far should explain why, and, also, explain why the restrictions are unnecessary to prevent granting an undue preference. Likewise, commenters who believe that the restrictions do not go far enough to prevent the granting of undue preferences should explain why and articulate how further restrictions can be fashioned while still providing planning employees with sufficient access to transmission information and to transmission function employees. Finally, commenters supporting the restrictions should explain the basis for their support. We urge commenters to be as specific as possible in their comments.

2. Competitive Solicitation Employees

52. In staff's outreach sessions, some public utilities also asserted that the standards of conduct hinder their ability to conduct efficient competitive solicitations, which are often conducted pursuant to an integrated resource plan. Some public utilities contended that the standards of conduct hinder their ability to evaluate the transmission impacts and costs of proposals responsive to competitive solicitations.

53. In raising this concern, some public utilities focused on the independent functioning requirement of the standards of conduct, because this requirement prohibits transmission function employees from working with bid evaluators to determine the transmission costs of bids responsive to a competitive solicitation. To make the evaluation of transmission costs more accurate, public utilities that conduct competitive solicitations seek to allow greater interaction between transmission function employees and those employees who conduct competitive solicitations. In staff's outreach, some public utilities contended that greater interaction would allow employees conducting competitive solicitations to engage in an iterative method for determining the ''all-in'' costs of a bid or combination of bids, *i.e.*, the ''net effect of a portfolio.'' For instance, two 100–MW projects evaluated together may cost less in transmission upgrades than the same two projects would cost if calculated separately because one may alleviate a constraint caused by the other. Through an iterative method, bid evaluators could, for example, submit a portfolio of bid options to transmission function employees, receive feedback on transmission costs related to the portfolio, refine the portfolio, and re-submit it to transmission function employees for further evaluation, and, if necessary, repeat these steps until a complete evaluation is achieved. In sum, some public utilities contended that, currently, they are unable to obtain an accurate picture of the true transmission costs of a bid and may not select the least-cost proposal.

54. The Commission proposes to add a new category of ''competitive solicitation employees,'' who would be permitted to direct, organize and execute certain ''competitive solicitations.'' Under this proposal, competitive solicitation employees could obtain non-public transmission information (but not non-public customer information) from the transmission provider to the extent necessary to evaluate bids or proposals responsive to a competitive solicitation.[74] The Commission does not believe that competitive solicitation employees have a need for non-public customer information. To the same extent, competitive solicitation employees could interact with

[70] The standards of conduct apply to merchant functions that are engaged in sales or purchases of power that will be resold at retail under state retail choice programs. Order No. 2004 at P 78.

[71] See Order No. 2004–A at P 127.

[72] *See, e.g., Cinergy Services, Inc.,* 111 FERC ¶ 61,512 (2005).

[73] This approach is consistent with the category being created below for competitive solicitations. We would permit competitive solicitation employees to have access to non-public transmission information and transmission function employees because, in those situations, the utility has allowed participation by third-party suppliers.

[74] To the extent that transmission function employees disclose transmission information that is not related to competitive solicitations, the transmission provider must observe the posting requirements of 18 CFR 358.5(b)(3).

transmission function employees. In order to allow competitive solicitation employees to interact with transmission function employees, competitive solicitation employees would be exempt from the independent functioning requirement.

55. To ensure that an undue preference is not given to marketing or energy affiliates, the Commission proposes several restrictions and limitations.[75] The term ''competitive solicitations'' would be defined as a solicitation by a public utility to obtain energy, capacity, or ancillary services to serve bundled retail load pursuant to an integrated resource plan. The definition would be limited to competitive solicitations that: (1) Are for the purposes of meeting bundled retail load and (2) are made pursuant to a state-mandated integrated resource plan. The Commission intends the first limitation to ensure that competitive solicitation employees are acting for the benefit of bundled retail load customers and not obtaining energy, capacity, or ancillary services for the purpose of meeting a public utility's other obligations. The Commission intends the second limitation to ensure that the public utility does not use competitive solicitation employees for any attempt to obtain energy, capacity or ancillary services. Thus, this limitation ensures that competitive solicitation employees are used only for relatively major procurements by virtue of their having been conducted as part of integrated resource planning. This limitation on competitive solicitations would also ensure state involvement as integrated resource planning is defined as planning undertaken pursuant to state mandate.

56. The Commission seeks comment on the type of load and contracts that would fall within the definition of a competitive solicitation and, thereby, be eligible to be supplied through a competitive solicitation that benefits from non-public transmission information and access to transmission function employees and what, if any, other protections should be put in place to guard against undue preferences to marketing and energy affiliates. As noted above, for purposes of Order No. 888 and the Commission's enforcement practices, we have treated pre-1996, grandfathered wholesale requirements contracts similar to how we have treated bundled retail load. We seek comments on whether or not the Commission should continue this practice for competitive solicitations. Should load arising from POLR obligations or from wholesale requirements contracts, full or partial, be supplied through such a competitive solicitation? The Commission recognizes that supply obtained for bundled retail sales sometimes is used to make wholesale sales, for instance, when bundled retail load decreases. Does this make restricting competitive solicitations to bundled retail sales unworkable?

57. In order to protect against the potential for undue preferences, the Commission proposes further restrictions on competitive solicitation employees' activities similar to the restrictions on planning employees. Competitive solicitation employees would be subject to the ''no-conduit rule,'' that is, they could not relay any non-public transmission information received to any marketing or energy affiliate.[76] Competitive solicitation employees also would be restricted from participating in the sales or purchases of energy, capacity, ancillary services or transmission services, other than in competitive solicitations, to ensure that they do not use their access to non-public transmission information and to transmission function employees to benefit the public utility or its affiliates in transactions with other market participants. Competitive solicitation employees could not direct, organize, or participate in the development of a bid, or proposal submitted in a competitive solicitation or a benchmark used in a competitive solicitation. Further, analogous to the no-conduit rule, competitive solicitation employees could not provide any non-public bid or competitive solicitation information to marketing or energy affiliates. In other words, if the competitive solicitation involves bundled retail load and is the result of a state-mandated integrated resource plan, the competitive solicitation and the employees conducting it are not subject to all of the usual restrictions of the standards of conduct, although they would be subject to other restrictions outlined here.

58. The Commission seeks comment on its competitive solicitation employees proposal and the restrictions that should apply to their activities, including the potential benefit and harm to the market, specifically, whether competitive solicitation employees would need access to non-public customer information in addition to non-public transmission information. The Commission would permit planning employees to serve as competitive solicitation employees and vice-versa. The Commission seeks comment on whether employees should be permitted to serve in both capacities. Because competitive solicitation employees would have access to non-public transmission information and to transmission function employees only for the purpose of conducting a competitive solicitation, the Commission expects that competitive solicitation employees would not need this access until after responses to a competitive solicitation are received. The Commission seeks comment on this restriction.

59. This proposed category of competitive solicitation employees may increase the opportunities to provide an undue preference that is not sufficiently offset by the proposed restrictions on the activities of competitive solicitation employees. Concerns about undue preferences are greater in the competitive solicitation process than in the IRP process, because an undue preference provided in a competitive solicitation can lead to a more concrete, nearer-term benefit, *e.g.*, a contract, than a similar preference granted in the IRP process, which has a longer term focus and typically results in non-binding recommendations. Further, competitive solicitation employees may be evaluating third-party proposals in competition with proposals by affiliates or proposals by the public utility to build itself the resources required. Thus, it is important to ensure that competitive solicitation employees do not provide an undue preference, particularly through the use of non-public transmission information or access to transmission function employees, throughout the competitive solicitation process from design through contract award.[77] Accordingly, the Commission seeks comments on whether its proposal strikes an appropriate balance between allowing access to transmission information and to transmission function employees while at the same time including appropriate restrictions to prevent undue preferences.

60. The Commission seeks comment on whether, instead of having separate categories for planning employees and for competitive solicitation employees, it should establish one category to include both sets of employees. States and utilities treat integrated resource planning and competitive solicitations

[75] If a utility's competitive solicitation results in the award of a contract to its affiliate, the Commission will review the resulting contract under the guidelines set forth in *Allegheny Energy Supply Company, LLC*, 108 FERC ¶ 61,082, at P 22 (2004).

[76] Proposed 18 CFR 358.5(b)(9).

[77] This concern about undue preference is lessened in states that require an independent evaluator to play a role in a public utility's competitive solicitation.

differently in some respects; in other respects, the two are treated together. Commenters should explain whether they would use the same personnel for each category. Commenters should also address whether keeping the categories separate assists in preventing undue discrimination. Commenters advocating a single category for both planning and competitive solicitation employees should describe the permissible activities for such employees and set forth the restrictions that would apply to their activities.

3. Specific Proposals

61. In light of the discussion above, the Commission proposes the following regulatory changes. We propose the following revision to the definition of Transmission Function employee in § 358.3(j):

Transmission Function employee means an employee, contractor, consultant or agent of a Transmission Provider, other than a Planning Employee as defined in § 358.3(o), who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

We propose the following additions to the definitions in § 358.3:

(1) *Integrated Resource Planning* means a process to establish a plan, required by state law, regulation or other state mandate, for a public utility to meet its future bundled retail load obligations that evaluates a range of alternatives that includes consideration of third party resources.

(2) *Competitive Solicitation* means a solicitation by a public utility to obtain energy, capacity, or ancillary services for the purposes of meeting the public utility's bundled retail load obligations pursuant to an Integrated Resource Planning obligation.

(3) *Competitive Solicitation Employee* means an employee, contractor, consultant or agent of a public utility who directs, organizes, or executes the public utility's Competitive Solicitations.

(4) *Planning Employee* means an employee, contractor, consultant or agent of a public utility who directs, organizes or conducts the public utility's Integrated Resource Planning.

We propose the following additions to the Independent Functioning section, § 358.4:

(1) A Transmission Function employee may interact with a Planning Employee for the purpose of engaging in Integrated Resource Planning. A Planning Employee, who receives non-public transmission information pursuant to § 358.5(b)(8) or who interacts with a Transmission Function employee, must not:

(i) Participate in sales of energy, capacity or ancillary services or in sales of transmission services, including directing, organizing, or otherwise preparing a bid, benchmark, or proposal by the public utility or by the public utility's Marketing or Energy Affiliates to supply energy, capacity or ancillary services;

(ii) Participate in purchases of energy, capacity or ancillary services or of purchases of transmission services other than in a Competitive Solicitation on behalf of its public utility Transmission Provider; or

(iii) Participate in non-planning transmission functions.

(2) A Transmission Function employee may interact with a Competitive Solicitation Employee for the purpose of evaluating the transmission component of bids or proposals considered in a Competitive Solicitation. A Competitive Solicitation Employee, who receives non-public transmission information pursuant to § 358.5(b)(9) or who interacts with a Transmission Function employee, must not:

(i) Provide any non-public bid, proposal, or Competitive Solicitation information to the Marketing or Energy Affiliate employees;

(ii) Participate in sales of energy, capacity, ancillary services or in sales of transmission services, including directing, organizing, or otherwise preparing a bid, benchmark, or proposal by the public utility or by the public utility's Marketing or Energy Affiliates to supply energy, capacity or ancillary services; or

(iii) Participate in any purchases of energy, capacity or ancillary services or of transmission services other than a Competitive Solicitation on behalf of its public utility Transmission Provider.

We propose the following additions to the Non-Discrimination Requirements section in § 358.5(b):

(1) A Transmission Provider may share transmission information covered by §§ 358.5(a) and (b)(1) with Planning Employees to the extent those employees need that information to direct, organize or carry out Integrated Resource Planning, provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(2) A Transmission Provider may share transmission information covered by §§ 358.5(a) and (b)(1) with Competitive Solicitation Employees to the extent those employees need that information to direct, organize, or execute Competitive Solicitations, provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

I. Changes to the Definition of Exempt Wholesale Generator

62. Currently, the standards of conduct define affiliate for an exempt wholesale generator (EWG) by referring to section 32a of Public Utility Holding Company Act of 1935 (PUHCA) and section 214 of the Federal Power Act (which in turn references, section 2(a) of PUHCA).[78] With respect to the standards of conduct, a determination of affiliation for EWGs is based on whether one company controls five percent or more of its stock.[79] The Commission proposes changes to the definition of affiliate with respect to EWGs in light of the repeal of the PUHCA. Specifically, the Commission proposes to make conforming changes to the definition of EWG to delete the reference to PUHCA and direct the reader to 18 CFR 366.1, which contains a definition of EWG and a definition of affiliate that applies to an EWG.[80]

63. Accordingly, the Commission proposes that § 358.3(b)(2) will read as follows:

For any exempt wholesale generator (as defined under § 366.1 of this chapter), an affiliate means the same as the definition of ''affiliate'' provided in § 366.1 of this chapter.

J. Revisions to Written Procedures

64. The Commission proposes several changes to the written procedures required of a transmission provider to delete outdated references, to clarify training certification, and to post the name of a transmission provider's chief compliance officer.

65. Currently, § 358.4(e)(1) of the Commission's regulations reads:

By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

Currently, § 358.4(e)(3) of the Commission's regulations reads:

The Transmission Provider must post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section *by September 22, 2004 or* within 30 days of becoming subject to the requirements of part 358.

The Commission proposes to delete § 358.4(e)(1) because the date for submitting a plan and schedule for implementing the standards of conduct has passed and the Commission does not need a new plan and schedule with respect to § 358.4(e)(3). The Commission proposes deleting ''by September 22, 2004 or'' because that date has passed and we are proposing to require in § 358.4(e)(3) that a transmission provider must comply with the

[78] 18 CFR 358.3(b)(2).

[79] For non-EWG affiliates, a voting interest of 10 percent or more creates a rebuttable presumption of control or affiliation. 18 CFR 358.3(c).

[80] 18 CFR 366.1 implements the Public Utility Holding Company Act of 2005. (PUHCA 2005). The Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109–58, 119 Stat. 594 (2005), repealed PUHCA, 15 U.S.C. 79a *et seq.* (2000), and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005), EPAct 2005 at 1261 *et seq.*

standards of conduct within 30 days of becoming subject to the requirements of part 358.

66. Section 358(e)(5) of the Commission's regulations require training on the standards of conduct for certain employees of the transmission provider. Those employees are required to ''sign a document or certify electronically that s/he has participated in the training.'' In order to ensure that such employees not only participate in, but, also, complete such training, the Commission proposes replacing the words ''participated in'' with the word ''completed'' so that the applicable sentence would read: ''The Transmission Provider must require each employee to sign a document or certify electronically signifying that s/he has completed the training.'' [81]

67. Section 358.4(e)(6) requires transmission providers to designate a chief compliance officer who will be responsible for standards of conduct compliance. Recently, Commission staff has tried to identify the name of the chief compliance officers of several transmission providers, and noticed that some transmission providers do not publicly identify the name of the chief compliance officer. Therefore, the Commission proposes to add the following sentence to § 358.4(e)(6) as follows: ''Transmission Providers must post the name of the Chief Compliance Officer and provide contact information on the OASIS or Internet Web site, as applicable.''

III. Information Collection Statement

68. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[82] In this NOPR, the Commission proposes to reinstate the provisions remanded by the court in *National Fuel.*

69. Previously, the Commission submitted to OMB the information collection requirements arising from the standards of conduct adopted in Order No. 2004. OMB approved those requirements.[83] The revisions to the standards of conduct proposed in this issuance do not impose any additional information collection burden on industry participants. In fact, by proposing that the standards of conduct will no longer govern the relationship between transmission providers and their energy affiliates, the information collection burden will likely decrease.

70. The Commission is submitting notification of the information collection requirements imposed in the NOPR to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[84] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods of minimizing respondent's burden, including the use of automated information techniques.

71. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–592 and 717.

Action: Proposed Collection.

OMB Control No: 1902–0157 and 1902–173.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: The information is necessary to ensure that all regulated transmission providers treat all transmission customers on a non-discriminatory basis.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the proposed revisions are necessary because of changes in transmission provider practices and in the energy market. The Commission proposes to revise the standards of conduct to be consistent with the recent court decisions and to make certain transmission provider practices more efficient and less costly.

72. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas and electric utility industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

73. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *Michael.miller@ferc.gov*. Comments on the requirements of the proposed rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

IV. Environmental Analysis

74. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[85] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[86] The action proposed here falls within the categorical exclusions provided in the Commission's regulations because this rule is clarifying and corrective and does not substantially change the effect of the regulations being amended.[87] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act

75. The Regulatory Flexibility Act of 1980 (RFA) [88] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Because most transmission providers do not fall within the definition of ''small entity,'' [89] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

76. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments must be filed on or before March 15, 2007. Reply comments must be filed on or before April 4, 2007. Comments and reply comments must refer to Docket No. RM07–1–000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

77. Comments may be filed electronically via the eFiling link on the

[81] Proposed 18 CFR 358.3(e)(5).

[82] 5 CFR 1320.11.

[83] Letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0157); ''Notice of Action'' letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0173).

[84] 44 U.S.C. 3507(d).

[85] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[86] 18 CFR 380.4.

[87] 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5).

[88] 5 U.S.C. 601–612.

[89] *See* 5 U.S.C. 601(3).

Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

78. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

79. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this NOPR are not required to serve copies of their comments on other commenters.

VII. Document Availability

80. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

81. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

82. User assistance is available for eLibrary and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to revise part 358, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 358—STANDARDS

Sec.

358.1 Applicability.
358.2 General principles.
358.3 Definitions.
358.4 Independent functioning.
358.5 Non-discrimination requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by § 358.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

(e) The Standards of Conduct in this part do not govern the relationship between a natural gas Transmission Provider as defined in § 358.3(a)(2) and its Energy Affiliates.

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independent from employees of its Marketing and Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit Marketing and Energy Affiliates.

§ 358.3 Definitions.

(a) *Transmission Provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(3) A Transmission Provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person. An affiliate includes a division that operates as a functional unit,

(2) For any exempt wholesale generator (as defined under § 366.1 of this chapter), an affiliate means the same as the definition of ''affiliate'' provided in § 366.1 of this chapter.

(c) *Control* (including the terms ''controlling,'' ''controlled by,'' and ''under common control with'') as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a Transmission Provider that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in § 358.3(d)(6)(v).

(6) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities that are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located.

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

(iv) An affiliate that purchases natural gas or energy solely for its own consumption. ''Solely for its own consumption'' does not include the purchase of natural gas or energy for the subsequent generation of electricity.

(v) A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system sales, and otherwise does not engage in the activities described in § 358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system sales and to engage in *de minimis* sales necessary to remain in balance under applicable pipeline tariff requirements.

(vi) A processor, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimis* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4).

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce in U.S. energy or transmission markets. Marketing also includes managing or controlling transmission capacity of a third-party as an asset manager or agent.

(1) A sales and marketing employee or unit includes:

(i) An interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and

(ii) A public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.

(2) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(3) *Marketing* means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except where:

(i) The seller is selling gas solely from its own production;

(ii) The seller is selling gas solely from its own gathering or processing facilities; or

(iii) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

(f) *Transmission* means natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter; and electric transmission, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission facilities.

(g) *Transmission Customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(i) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

(j) *Transmission Function employee* means an employee, contractor, consultant or agent of a Transmission Provider, other than a Planning Employee as defined in § 358.3(o), who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

(k) *Marketing Affiliate* means an Affiliate as that term is defined in § 358.3(b) or a unit that engages in marketing, sales or brokering activities as those terms are defined at § 358.3(e).

(l) *Integrated Resource Planning* means a process to establish a plan, required by state law, regulation or other state mandate, for a public utility to meet its future bundled retail load obligations that evaluates a range of alternatives that includes consideration of third party resources.

(m) *Competitive Solicitation* means a solicitation by a public utility to obtain energy, capacity, or ancillary services for the purposes of meeting the public utility's bundled retail load obligations pursuant to an Integrated Resource Planning obligation.

(n) *Competitive Solicitation Employee* means an employee, contractor, consultant or agent of a public utility who directs, organizes, or executes the public utility's Competitive Solicitations.

(o) *Planning Employee* means an employee, contractor, consultant or agent of a public utility who directs, organizes or conducts the public utility's Integrated Resource Planning.

§ 358.4 Independent functioning.

(a) *Separation of functions.* (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet Web site, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(5) Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who are not ''Transmission Function Employees'' as that term is defined in § 358.3(j). A Transmission Provider may share transmission information covered by §§ 358.5(a) and (b) with its shared senior officers and directors provided that they do not participate in directing, organizing or executing transmission system operations or marketing functions; or act as a conduit to share such information with a Marketing or Energy Affiliate.

(6) Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity functions with their Marketing and Energy Affiliates. This provision does not apply to natural gas transmission providers.

(7) A Transmission Function employee may interact with a Planning Employee for the purpose of engaging in Integrated Resource Planning. A Planning Employee, who receives non-public transmission information pursuant to § 358.5(b)(8) or who interacts with a Transmission Function employee, must not:

(i) Participate in sales of energy, capacity or ancillary services or in sales

of transmission services, including directing, organizing, or otherwise preparing a bid, benchmark, or proposal by the public utility or by the public utility's Marketing or Energy Affiliates to supply energy, capacity or ancillary services;

(ii) Participate in purchases of energy, capacity or ancillary services or of purchases of transmission services other than in a Competitive Solicitation on behalf of its public utility Transmission Provider; or

(iii) Participate in non-planning transmission functions.

(8) A Transmission Function employee may interact with a Competitive Solicitation Employee for the purpose of evaluating the transmission component of bids or proposals considered in a Competitive Solicitation. A Competitive Solicitation Employee, who receives non-public transmission information pursuant to § 358.5(b)(9) or who interacts with a Transmission Function employee, must not:

(i) Provide any non-public bid, proposal, or Competitive Solicitation information to the Marketing or Energy Affiliate employees;

(ii) Participate in sales of energy, capacity, ancillary services or in sales of transmission services, including directing, organizing, or otherwise preparing a bid, benchmark, or proposal by the public utility or by the public utility's Marketing or Energy Affiliates to supply energy, capacity or ancillary services; or

(iii) Participate in any purchases of energy, capacity or ancillary services or of transmission services other than a Competitive Solicitation on behalf of its public utility Transmission Provider.

(b) *Identifying affiliates on the public Internet.* (1) A Transmission Provider must post the names and addresses of Marketing and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its Marketing and Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet Web site, as applicable, required by §§ 358.4(b)(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the potential merger is announced.

(vi) All OASIS or Internet Web site postings required by part 358 must comply, as applicable, with the requirements of § 37.6 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates on the other, must be posted on the OASIS or Internet Web site, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet Web site, as applicable, for 90 days.

(d) *Books and records.* A Transmission Provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures.* (1) [Reserved.]

(2) Each Transmission Provider must be in full compliance with the standards of conduct within 30 days of becoming subject to the Commission's jurisdiction.

(3) The Transmission Provider must post on the OASIS or Internet Web site, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section within 30 days of becoming subject to the requirements of part 358.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. The Transmission Provider must require each employee to sign a document or certify electronically signifying that s/he has completed the training.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance. Transmission Providers must post the name of the Chief Compliance Officer and provide contact information on the OASIS or Internet Web site, as applicable.

§ 358.5 Non-discrimination requirements.

(a) *Information access.* (1) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet Web site, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet Web site, as applicable.

(2) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services,

balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet Web site or that is not otherwise also available to the general public without restriction.

(b) *Prohibited disclosure.* (1) An employee of the Transmission Provider may not disclose to its Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet Web site, through access to information not posted on the OASIS or Internet Web site that is not contemporaneously available to the public, or through information on the OASIS or Internet Web site that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from non-affiliated transmission customers or potential non-affiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet Web site, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet Web site in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet Web site.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate. If a non-affiliated customer authorizes the Transmission Provider to share its information with a Marketing or Energy Affiliate, the Transmission Provider must post notice on the OASIS or Internet Web site of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a Marketing or Energy Affiliate. A Transmission Provider may share information covered by § 358.5(b)(1) and (2) with employees permitted to be shared under § 358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(8) A Transmission Provider may share transmission information covered by § 358.5(a) and (b)(1) with Planning Employees to the extent those employees need that information to direct, organize or carry out Integrated Resource Planning, provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(9) A Transmission Provider may share transmission information covered by § 358.5(a) and (b)(1) with Competitive Solicitation Employees to the extent those employees need that information to direct, organize, or execute Competitive Solicitations, provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(c) *Implementing tariffs.* (1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time.

(4)(i) Electric Transmission Providers must maintain a written log, available for Commission audit, detailing the circumstances and manner in which they exercised their discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet Web site within 24 hours of when a transmission Provider exercises its discretion under any terms of the tariff.

(ii) Natural gas Transmission Providers must maintain a written log of waivers that the natural gas Transmission Provider grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request.

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its Marketing or Energy Affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts.* Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet Web site contemporaneous with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas upon which the discount is based; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet Web site for 60 days from the date of posting.

[FR Doc. E7–1118 Filed 1–26–07; 8:45 am]

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Notices

Federal Register
Vol. 72, No. 18
Monday, January 29, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 2007

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Keith Churchill or Norma Ball, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2590.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

In accordance with Section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761), Section 12 of the NSLA (42 U.S.C. 1760 (f)), and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2007. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 2005 through November 2006.

The 2007 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.51	$0.1500	$0.1200
Lunch or Supper	2.64	0.2750	0.2300
Snacks	0.61	0.0750	0.0600

The 2007 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.45	$0.2425	$0.1925
Lunch or Supper	4.28	0.4475	0.3700
Snacks	1.00	0.1225	0.0950

The 2007 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.77	$0.1750	$0.1400
Lunch or Supper	3.09	0.3225	0.2675
Snacks	0.72	0.0875	0.0700

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served.

The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 3.07 percent increase during 2006 (from 195.6 in November 2005 to 201.6 in November 2006) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by Section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: January 23, 2007.

Roberto Salazar,

Administrator.

[FR Doc. 07–346 Filed 1–26–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; National Survey on Recreation and the Environment

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, National Survey on Recreation and the Environment.

DATES: Comments must be received in writing on or before March 30, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to H. Ken Cordell, USDA Forest Service, 320 Green Street, Athens, GA 30602–2044.

Comments also may be submitted via facsimile to (706) 559–4266 or by e-mail to: *Kcordell@fs.fed.us*.

The public may inspect comments received at Research Work Unit SRS–4953, USDA Forest Service, 320 Green Street, Athens, GA, Room 233, during normal business hours. Visitors are encouraged to call ahead to (706) 559–4262 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: H. Ken Cordell, Research Work Unit SRS–4901, 706–559–4263. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Survey on Recreation and the Environment.

OMB Number: 0596–0127.

Expiration Date of Approval: 8/31/07.

Type of Request: Revision.

Abstract: Federal land-managing agencies are responsible for the management of more than 650 million acres of public lands; this includes management for recreation opportunities. To manage well and wisely, knowledge of recreation demands, opinions, preferences, and attitudes regarding the management of these lands is imperative and necessary to the development of effective policy, planning, and on-the-ground management. For all federal agencies, input from and knowledge about the public is mandatory.

For both land and non-land management agencies, the collection and analysis of public demand data is vital to designing effective policies and programs for the management and use of water, forest, and wildlife resources. Authorizing legislation for this collection is the Forest and Rangeland Renewable Resources Planning Act (RPA) (PL 93–378–88 Stat. 475), which directs the Secretary of Agriculture to assess the status of the Nation's forest and range lands periodically and to recommend a Forest Service program for their sustained management and use. Among the program areas included in the Forest Service assessment are outdoor recreation and wilderness.

This collection is a multi-agency partnership. The Forest Service (U.S. Department of Agriculture) and the National Oceanic and Atmospheric Administration (U. S. Department of Commerce) are the lead agencies. This is the ninth in a series of surveys conducted since 1960. The survey:

(1) Measures the public demand on the Nation's land, water, and other natural resources for outdoor recreation;

(2) Identifies public perceptions of accessibility to recreational sites;

(3) Seeks public feedback regarding the management of public recreation sites and natural resources;

(4) Asks for suggestions on how public agencies can improve management of public recreation areas and natural resources;

(5) Seeks information on public attitudes about the environment and preferences for public and private recreational sites; and

(6) Identifies shifts in recreational demands that might influence the delivery of recreational services.

The survey consists of a telephone survey of 75,000 individuals, age 16 or older, residing in the United States and will be conducted using computer-assisted telephone interviewing (CATI) technology. The Human Dimensions Research Laboratory at the University of Tennessee in Knoxville, TN will conduct the telephone interviews and data collection. A team of research scientists representing the main federal agencies involved in the survey will analyze the data. Both English and Spanish versions of the questionnaires will be used.

Estimate of Annual Burden: 15 minutes per respondent.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 25,000.

Estimated Annual Number of Responses per Respondent: 65.

Estimated Total Annual Burden on Respondents: 4,915.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: January 22, 2007.

Jimmy L. Reaves,

Associate Deputy Chief for Research & Development.

[FR Doc. E7–1311 Filed 1–26–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection entitled, Disposal of Mineral Materials.

DATES: Comments must be received in writing on or before March 30, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Minerals and Geology Management Staff, Mail Stop 1126, 1601 N. Kent Street—5th Floor, Forest Service, USDA, Arlington, VA 22209.

Comments also may be submitted via facsimile to (703) 605–1575 or by e-mail to: *tferguson@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Minerals and Geology Management Staff, 1601 N. Kent Street—5th Floor, Forest Service, USDA, Arlington, Virginia during normal business hours. Visitors are encouraged to call ahead to (703) 605–4794 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tony Ferguson, Assistant Director, Minerals and Geology Management, at (703) 605–4785. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Disposal of Mineral Materials.

OMB Number: 0596–0081.

Expiration Date of Approval: June 30, 2007.

Type of Request: Extension of a currently approved collection.

Abstract: The Mineral Materials Act of 1947, as amended, and the Multiple Use Mining Act of 1955, as amended, authorize the Secretary of Agriculture to dispose of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service. The collected information enables the Forest Service to document planned operations, to prescribe the terms and conditions the agency deems necessary to protect surface resources, and to effect a binding contract agreement. Forest Service employees will evaluate the collected information to ensure that entities applying to mine mineral materials are financially accountable and will conduct their activities in accordance with the mineral regulations at Part 228, subpart C of Title 36 of the Code of Federal Regulations.

Individuals, organizations, companies, or corporations interested in mining mineral materials on National Forest System lands may contact their local Forest Service office to inquire about opportunities, to learn about areas on which such activities are permitted, and to request form FS–2800–9 (Contract of Sale for Minerals Materials). Interested parties are asked to provide information that includes the purchaser's name and address, the location and dimensions of the area to be mined, the kind of material that will be mined, the quantity of material to be mined, the sales price of the mined material, the payment schedule, the amount of the bond, and the period of the contract. If this information is not collected, the Forest Service would not comply with Federal regulations and operations to mine mineral materials could cause undue damage to surface resources.

Estimate of Annual Burden: 2.5 hours.

Type of Respondents: Mineral materials operators.

Estimated Annual Number of Respondents: 8,400.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 21,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: January 22, 2007.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E7–1312 Filed 1–26–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review

SUMMARY: On January 22, 2007, ThyssenKrupp Mexinox S.A. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested

of the Notice of Final Results of the 2004/2005 Administrative Review made by the International Trade Administration, respecting Stainless Sheet and Strip in Coils from Mexico. This determination was published in the **Federal Register** (71 FR 76978) on December 22, 2006. The NAFTA Secretariat has assigned Case Number USA–MEX–2007–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 18, 2006, requesting panel review of the Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 21, 2007);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 8, 2007); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 23, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–1298 Filed 1–26–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–7007–47]

Availability of Grant Funds for Fiscal Year 2007

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Amendment of Notice; Extension of Solicitation Period and Eligibility Change

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, publishes this notice to amend the competitive solicitation for the Social Science Fellowship in the National Estuarine Research Reserve Program to modify the eligibility criteria to allow part-time students to apply for the program. In addition, two National Estuarine Research Reserves are being added to the list of eligible reserves where candidates can propose their research including the Old Woman Creek National Estuarine Research Reserve in Huron, Ohio and the Elkhorn Slough National Estuarine Research Reserve in Watsonville, California. Due to these amendments, the solicitation period is extended to allow eligible candidates time to submit applications.

DATES: The new deadline for the receipt of proposals is 11 p.m. EST, February 28, 2007, for both electronic and paper applications.

ADDRESSES: The address for submitting proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged). Paper submissions should be sent to the attention of Erica Seiden, Office of Ocean and Coastal Resource Management Estuarine Reserves Division (N/ORM5), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 10th Floor Station 10542, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Erica Seiden 301–563–1172, *erica.seiden@noaa.gov.*

SUPPLEMENTARY INFORMATION: This program was originally solicited in the **Federal Register** on December 18, 2006 (71 FR 75712). Since the date of publication of the original solicitation, two Estuarine Reserve sites have indicated to the program that they were interested in hosting graduate fellows. In addition, the program received a number of inquiries from part-time graduate students indicating their interest in participating in this new fellowship program. As a result, NOAA amends the competitive solicitation for the Social Science Fellowship in the National Estuarine Research Reserve Program to add Old Woman Creek National Estuarine Research Reserve in Huron, Ohio and the Elkhorn Slough National Estuarine Research Reserve in Watsonville, California to the list of eligible reserves where candidates can propose their research, and to modify the eligibility criteria to allow part-time students to apply for the program. In order to accommodate the two new sites and allow the expanded pool of potential applicants to submit proposals, NOAA is extending the deadline for the receipt of applications from 11 p.m. EST, on February 1, 2007 to 11 p.m. EST, on February 28, 2007, for both electronic and paper applications. All other requirements for this solicitation remain the same as that published on December 18, 2006 (71 FR 75712).

Limitation of Liability

Funding for this program is contingent upon the availability of Fiscal Year 2007 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, Vol. 67, No. 210,

pp. 66177–66178, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. 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.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 22, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E7–1314 Filed 1–26–07; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Third-Country Fabric

January 23, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 12-Month Cap on Duty- and Quota-Free Benefits.

EFFECTIVE DATE: January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000, as amended by Section 3108 of the Trade Act of 2002, Section 7(b)(2) of the AGOA Acceleration Act of 2004, and Section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006); Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of the Trade and Development Act of 2000 (TDA 2000) provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Title VI of the TRHCA 2006 extended this special rule for lesser-developed countries through September 30, 2012. Further, this Act amended the percentage to be used in calculating the quantitative limitation for preferential treatment available for apparel articles entered under this special rule for lesser-developed Countries for the 12-month period beginning on October 1, 2006 and extending through September 30, 2007. **See Limitations of Duty-and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African**

Countries from Regional and Third-Country Fabric, published in the **Federal Register** on September 26, 2006 (71 FR 56112).

Title VI of the TRHCA 2006 provides that the quantitative limitation for apparel imported under the special rule for lesser-developed countries for the twelve-month period beginning October 1, 2006 will be an amount not to exceed 3.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. See Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**. The purpose of this notice is to amend the quantitative limitation previously published in the **Federal Register** on September 26, 2006 (71 FR 56112).

For the one-year period, beginning on October 1, 2006, and extending through September 30, 2007, the aggregate quantity of imports eligible for preferential treatment under the provision for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries is 1,498,846,694 square meters equivalent. Of this amount, 815,001,892 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 07–350 Filed 1–24–07; 1:41 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held February 13, 2007, from 9:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be in room 3M60/70 in the GAO building located at 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These agencies are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. The duties of the Council include, among others, soliciting, reviewing, and evaluating estuarine habitat restoration project proposals, and submitting to the Secretary of the Army a prioritized list of projects recommended for construction.

Agenda topics will include decisions on recommending additional proposals to the Secretary of the Army for funding and a brief update on projects previously recommended and funded.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. February 9, 2007. We cannot guarantee access for requests received after that time. Please contact Ellen Cummings to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the ''G'' Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 9:30 a.m. will be escorted to the meeting. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–349 Filed 1–26–07; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Executive Decision Making Subcommittee to the CNO. The meeting will consist of discussions of the current decision making processes of the U.S. Navy's senior leaders.

DATES: The meeting will be held on February 8, 2007, from 10 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held in the Center for Naval Analysis Corporation Building, 4825 Mark Center Drive, Alexandria, VA 22311, Room 1A01.

FOR FURTHER INFORMATION CONTACT: LCDR Lester Brown, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4939.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute sensitive information that is specifically authorized by Executive Order to be kept secret. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: January 22, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–1325 Filed 1–26–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Delete.

SUMMARY: The Department of the Navy is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on February 28, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 22, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–4

SYSTEM NAME:

Program 38 Science and Technology Personnel Skills (April 24, 1997, 62 FR 19994).

REASON:

This system of records is no longer needed. Any necessary information is maintained in the military member's personnel file, N01070–3, entitled ''Navy Military Personnel Records System'' last published in the **Federal Register** on November 16, 2004, at 69 FR 67128.

[FR Doc. E7–1329 Filed 1–26–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0008]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 28, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 22, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Military Personnel Records (November 16, 2004, 69 FR 67128).

CHANGES:

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SYSTEM LOCATION:

In para 1, line 4, after ''active duty'' add ''Navy'' and replace ''except'' with ''including''. Also, in line 8 after ''1995'' change '';'' to ''.''.

Delete second para. In old para 4, last line, replace ''*http://neds.daps.dla.mil/sndl.htm*'' with ''*http://doni.daps.dla.mil/sndl.aspx*''.

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SYSTEM MANAGER(S) AND ADDRESS:

In last line, replace ''*http://neds.daps.dla.mil/sndl.htm*'' with ''*http://doni.daps.dla.mil/sndl.aspx.*''

NOTIFICATION PROCEDURE:

Delete para 3.

In old para 4, lines 8 and 9, change *www.nara.gov/regional/mpr.html* to read *http://www.archives.gov/st-louis/military-personnel/index.html*''

In old para 5, lines 9 and 10, replace ''*http://neds.daps.dla.mil/sndl.htm*'' with ''*http://doni.daps.dla.mil/sndl.aspx*''.

Replace old para 6 with ''The letter should contain first, middle, and last name and the last four of the social security number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.''

RECORD ACCESS PROCEDURES:

In para 2, line 5, delete ''except'' and replace with ''including''.

Delete para 3.

In old para 4, lines 7–9, change *www.nara.gov/regional/mpr.html* to read *http://www.archives.gov/st-louis/military-personnel/index.html*''

In old para 5, line 9, replace ''*http://neds.daps.dla.mil/sndl.htm*'' with ''*http://doni.daps.dla.mil/sndl.aspx*''.

Replace old para 6 with ''The letter should contain first, middle, and last name and the last four of the social security number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.''

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N01070–3

SYSTEM NAME:

Navy Military Personnel Records System

SYSTEM LOCATION:

Primary locations: Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty Navy and reserve members (including Individual Ready Reserve (IRR)); and for records of members that were retired, discharged, or died while in service since 1995. Write to the National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of members that were retired, discharged, or died while in service prior to 1995.

SECONDARY LOCATIONS:

Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10606 as implemented by DoD Instruction 1030.1, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, in the performance of their official duties related to eligibility, notification and assistance in obtaining health and medical benefits by members and former members of the Navy.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To the Office of Personnel Management for verification of military service for benefits, leave, or reduction-in-force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Director of Selective Service System in the performance of official duties related to registration with the Selective Service System.

To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation. To officials and employees of the Department of Veterans Affairs in the performance of their duties relating to approved research projects, and for processing and adjudicating claims, benefits, and medical care.

To officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior service with the Navy.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy. Access will be limited to those portions of the member's record required to effectively assist the member.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress. Access is limited to those portions of the member's record required to verify service time.

To provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies. Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by

name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Those documents that are designated as temporary in the prescribing regulations remain in the record until their obsolescence, or the member is separated from the Navy, then are removed and provided to the individual. Those documents designated as permanent are submitted to Navy Personnel Command at predetermined times to form a single personnel record in the Electronic Military Personnel Records System (EMPRS), and remain in EMPRS permanently. Permanent records are transferred to the National Archives and Records Administration 62 years after the completion of the service member's obligated service.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities.

Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to:

For permanent records of all active duty and reserve members (except Individual Ready Reserve (IRR)), former members discharged, deceased, or retired since 1995, should be addressed to the Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120;

Inquiries regarding records of former members discharged, deceased, or retired before 1995 should be addressed to the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. You may access their Web site at *http://www.archives.gov/st-louis/miitary-personnel/index.html* to obtain guidance on how to access records;

Inquiries regarding field service records of current members should be addressed to the Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned.

Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

The letter should contain first, middle, and last name and the last four of the social security number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (including Individual Ready Reserve (IRR));

Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of former members discharged, deceased, or retired before 1995.

Visit their Web site at *http://www.archives.gov/st-louis/military-personnel/index.html* to download SF180 to request records through regular mail or to file an electronic request for records;

The Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned for field service records of current members.

Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

The letter should contain first, middle, and last name and the last four of the social security number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

Current members, active and reserve, may visit the Navy Personnel Command, Records Review Room, Bldg 109, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–1330 Filed 1–26–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0007]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Navy is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 28, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the

Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 22, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings (April 14, 1999, 64 FR 18410).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374–5023.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

The signed request should contain name and social security number and docket number if known.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

The signed request should contain name and social security number and docket number if known.''

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N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings (April 14, 1999, 64 FR 18410).

SYSTEM LOCATION:

Naval Discharge Review Board, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 U.S.C. 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553, Review of discharge or dismissal and E.O. 9397 (SSN).

PURPOSE(S):

Selected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Secretary, Department of Veterans Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche; plastic recording disks; recording cassettes; and computerized database.

RETRIEVABILITY:

Name, docket number, and/or Social Security Number.

SAFEGUARDS:

Computerized database is password protected and access is limited. The office is locked at the close of business. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.

RETENTION AND DISPOSAL:

Files are transferred to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 when case is closed and then destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

The signed request should contain name and social security number and docket number if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE., Room 309, Washington, DC 20374–5023.

The signed request should contain name and social security number and docket number if known.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files (August 30, 2000, 65 FR 52718).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 874(a), 952–954; 10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10601 *et seq.*; Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures, SECNAVINST 5815.3J, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).''

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon Street SE., Room 309, Washington Navy Yard, DC 20374–5023.''

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon Street SE., Room 309, Washington Navy Yard, DC 20374–5023.''

RECORD ACCESS PROCEDURES:

Delete first paragraph and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon Street SE., Room 309, Washington Navy Yard, DC 20374–5023.''

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N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files.

SYSTEM LOCATION:

Naval Clemency and Parole Board, 720 Kennon Street SE., Room 308, Washington Navy Yard, DC 20374–5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy, Marine Corps, or Coast Guard whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; records of trial; and a summarized record of the proceedings of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952–954; 10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10601 *et seq.*; Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures, SECNAVINST 5815.3J, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information regarding the investigation and disposition of an offense (Victim's Rights and Restitution Act of 1990).

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized database.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administration office. Access during business hours is controlled by Board personnel. The office is locked at the close of business. Computerized database is password protected.

RETENTION AND DISPOSAL:

Files are transferred to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 one year after discharge of individual from the naval service. Files are destroyed after 25 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon Street SE., Room 309, Washington Navy Yard, DC 20374–5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon Street SE., Room 309, Washington Navy Yard, DC 20374–5023.

Requests should contain full name and Social Security Number and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Secretary of the Navy Council of Review Boards, Department of the Navy, 720 Kennon

Street SE., Room 309, Washington Navy Yard, DC 20374–5023.

Requests should contain full name and Social Security Number and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

12930–1

SYSTEM NAME:

Human Resources Group Personnel Records (September 20, 1993, 58 FR 48852).

CHANGES:

SYSTEM NAME:

At beginning of entry add ''NEXCOM''.

* * * * *

PURPOSE(S):

Delete entry and replace with ''To determine suitability for employment, transfer, promotion or retention; to verify employment; to track travel performed and verify employee received proper remuneration for the travel performed; to process appraisals and salary increases; to provide a unique identification number that can be extracted into other systems with employee credentials (i.e., name, title, supervisor, department) for Information Technology systems account access and user provisioning purposes; to recognize accomplishments and contributions made by employees, and to administer and adjudicate discipline, grievances, complaints, appeals, litigation, and program evaluations.''

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N12930–1

SYSTEM NAME:

NEXCOM Human Resources Group Personnel Records.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 and at all Navy Exchanges.

Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Criminal Investigative Service (NCIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93–259, Equal Employment Act of 1972; and E.O. 9397 (SSN).

PURPOSE(S):

To determine suitability for employment, transfer, promotion or retention; to verify employment; to track travel performed and verify employee received proper remuneration for the travel performed; to process appraisals and salary increases; to provide a unique identification number that can be extracted into other systems with employee credentials (i.e., name, title, supervisor, department) for Information Technology systems account access and user provisioning purposes; to recognize accomplishments and contributions made by employees, and to administer and adjudicate discipline, grievances, complaints, appeals, litigation, and program evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: File folders; magnetic tapes; automated minicomputer database, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the local Navy Exchange personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118, for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Master Record Holder: Manager, Staffing and Career Management, HRG–3, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Manager at the local Navy Exchange. Mailing Addresses are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724, or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724, or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigative results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

N01752–3

SYSTEM NAME:

Child Sexual Abuse (CSA) Case Management System (May 11, 1999, 64 FR 25312).

CHANGES:

* * * * *

SYSTEM LOCATION:

Navy Installations Command (N9113), 2713 Mitscher Road SW., Ste 300, Anacostia Annex, DC 20373–5802.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; E.O. 9397 (SSN); and OPNAV Instruction 1752.2A, Family Advocacy Program.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records closed before 1 January 1998 will be maintained on site for a period of four years, after which they will be retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 and held for a period of 50 years. All paper records closed on or after 1 January 1998, will be maintained on site for a period of five years, after which they will be destroyed, with only the electronic records being maintained for 50 years.''

* * * * *

N01752–3

SYSTEM NAME:

Child Sexual Abuse (CSA) Case Management System.

SYSTEM LOCATION:

Navy Installations Command (N9113), 2713 Mitscher Road SW., Ste 300, Anacostia Annex, DC 20373–5802.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty personnel alleged to have committed or been involved with Child Sexual Abuse (CSA) cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alleged offender's name, Social Security Number, date of birth, rank, military address, year(s) of alleged incident, expiration of active obligated service, projected rotation date, number of victims, notes, case determination, case number, subsequent reviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; E.O. 9397 (SSN); and OPNAV Instruction 1752.2A, Family Advocacy Program.

PURPOSE(S):

To maintain copies of all reported Child Sexual Abuse (CSA) cases and maintain a computerized database of alleged CSA offenders for use in tracking the individual, collecting statistics, conducting research studies, complying with Child Protective Service requirements at state and local levels, and assisting in the development of CSA program policy issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect; or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To officials and employees of Federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health case providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

PAPER AND AUTOMATED RECORDS.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Information maintained on the computer is password protected. Computer terminals are located in supervised areas with an access controlled system.

RETENTION AND DISPOSAL:

Paper records closed before 1 January 1998 will be maintained on site for a period of four years, after which they will be retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 and held for a period of 50 years. All paper records closed on or after 1 January 1998, will be maintained on site for a period of five years, after which they will be destroyed, with only the electronic records being maintained for 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander Navy Installations Command (N9113), 2713 Mitscher Road SW., Suite 300, Anacostia Annex, DC 20373–5802.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander Navy Installations Command (N9113), 2713 Mitscher Road SW., Suite 300, Anacostia Annex, DC 20373–5802.

Request should contain full name and Social Security Number of the individual and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander Navy Installations Command (N9113), 2713 Mitscher Road SW., Suite 300, Anacostia Annex, DC 20373–5802.

Request should contain full name and Social Security Number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Family advocacy files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07200–1

SYSTEM NAME:

Navy Morale, Welfare, and Recreation Debtors List (June 5, 2006, 71 FR 32332).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx*''.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In first paragraph, after ''Installations'' add ''Command''. Also, delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx*''.

NOTIFICATION PROCEDURE:

Delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx*''.

RECORD ACCESS PROCEDURES:

Delete ''*http://neds.daps.dla.mil/sndl.htm*'' and replace with ''*http://doni.daps.dla.mil/sndl.aspx*''.

* * * * *

N07200–1

SYSTEM NAME:

Navy Morale, Welfare, and Recreation Debtors List.

SYSTEM LOCATION:

Local Morale, Welfare, and Recreation Offices/Visitors Quarters/Civilian Fund Business Offices that fall under the Commanding Officer of an installation. Official mailing addresses are published in *http://doni.daps.dla.mil/sndl.aspx*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe money to Navy Morale, Welfare and Recreation (MWR) facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of application, dunning notices, DD Form 139s, correspondence from responsible MWR Business Office, Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s); correspondence relative to attempt by Navy MWR to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; and Treasury Offset Program (TOP) accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 31 FR 285.11, Administrative Wage Garnishment; Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy's Morale, Welfare and Recreation (MWR) facilities for the purpose of collecting debts.

Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

To any State and local governmental agency that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent non-tax debt to the United States for the purpose of garnishment.

To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal, State or local agency which seeks to locate the same individual for its own debt collection purpose.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mainframe magnetic tapes, disk drives, printed reports, file folders, and PC hard and floppy disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Information is stored in locked file cabinets, supervised office space, supervised computer tape library that is accessible only through the data center, entry to which is controlled by a ''cardpad'' security system, for which only authorized personnel are given the access code. PC entry into the system may only be made through individual passwords.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Commander, Navy Installations (Finance Department) Millington Detachment, 5720 Integrity Drive, Millington, TN 38055–6500.

Record holder: Local Morale, Welfare, and Recreation Offices/Visitors Quarters/Civilian Fund Business Offices that fall under the Commanding Officer of an installation. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/ Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity records; Internal Revenue Service; credit bureaus; the Defense Manpower Data Center; and the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–1333 Filed 1–26–07; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act; Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9 a.m., March 22, 2007.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: This public hearing and meeting is the third in a series concerning the Department of Energy's (DOE) and National Nuclear Security Administration's (NNSA) incorporation of safety into the design and construction of new DOE defense nuclear facilities and into modification of existing facilities. The Board is responsible, pursuant to its statutory charter, to review and evaluate the content and implementation of standards relating to the design and construction of such facilities. This public hearing and meeting is a continuation of the Board's interest in integrating safety early into the design process. During the Board's initial public hearing on this subject, on December 7, 2005, the Board focused on the adequacy of DOE's existing directives related to the design of new facilities. In preparation for that hearing, DOE outlined its expectations for integrating safety into design and established a framework for achieving needed improvements. During the second public hearing on July 19, 2006, the Board further explored integration of safety into design and the progress being made in implementing DOE's safety in design initiatives. This third public hearing and meeting will consider early issue identification, communication of Board issues to DOE, issue management, and early resolution and closure of design related safety issues. The hearing will also address the implementation status of DOE Order 413.3 and DOE Standard (STD)–1189, the revision of DOE Manual 413.3–1, and lessons learned with respect to incorporating safety in design at two major Federal projects: the Waste Treatment Plant (WTP) project and the Chemistry and Metallurgy Research Replacement (CMRR) project. This hearing and meeting is intended to further assist the Board and DOE in their collective efforts to evaluate any needed improvements in the timeliness of issue resolution. The Board again expects to hear presentations from both DOE and NNSA senior management officials concerning integration of safety into design. The Board may also collect any other information relevant to health or safety of the workers and the public, with respect to safety in design, that may warrant Board action. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on March 21, 2007, will be scheduled for time slots, beginning at approximately 12:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. hearing and meeting. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing and meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office. The Board will hold the record open until April 21, 2007, for the receipt of additional materials. A transcript of the hearing and meeting will be made

available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public hearing and meeting, or need this notice in another format (*e.g.* braille, large print), please notify Brian Grosner, General Manager, at the toll-free contact number listed above. Determination of requests for reasonable accommodation will be made on a case-by-case basis. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: January 24, 2007.

A.J. Eggenberger,

Chairman.

[FR Doc. 07–385 Filed 1–25–07; 12:19 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 28, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 23, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 354.

Abstract: Section 118(e) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (PL 105–332) requires the Department of Education to submit an annual report to the Congress. Information for that report is obtained from semi-annual and annual progress reports required of grantees by Sec. 74.51 EDGAR. Information is used by Departmental managers and project officers: (1) To develop the required annual report to the Congress; (2) to monitor State activities for compliance; and (3) to identify high quality practices for dissemination among the States, as required by the law.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3219. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1343 Filed 1–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 28, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the

following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 23, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: National Evaluation of the Comprehensive Technical Assistance Centers.

Frequency: One time.

Affected Public: Not-for-profit institutions; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 210.

Burden Hours: 1,071.

Abstract: The purpose of this study is to evaluate the Comprehensive Technical Assistance Centers created to assist state education agencies with the implementation of the requirements of No Child Left Behind legislation. Evaluators will conduct site visits to each Center and a sample of each Center's work will be assessed for quality and relevance by expert peer reviewers.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3232. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1344 Filed 1–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Announcing OMB Approval of Information Collections

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) announces that the Office of Management and Budget (OMB) has approved certain collections of information, listed in the **SUPPLEMENTARY INFORMATION** below, following the Department's submission of requests for approvals under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This notice describes the information collections that have been approved or re-approved, their OMB control numbers, and their current expiration dates.

FOR FURTHER INFORMATION CONTACT: For Title I—Improving the Academic Achievement of the Disadvantaged—Assessment and Accountability for LEP students (OMB Control No. 1810–0681): Jacquelyn C. Jackson, Ed.D., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826. For Federal Family Education Loan Program Regulations (OMB Control No. 1845–0020): Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 219–7048 or via the Internet at: *Gail.McLarnon@ed.gov.* For collections related to the Individuals with Disabilities Education Act (OMB Control Nos. 1820–0030, 1820–0043, 1820–0517, 1820–0518, 1820–0521, 1820–0600, 1820–0621, 1820–0624, and 1820–0677): Alexa Posny, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW., Washington, DC 20202–2641. Telephone: (202) 245–7459, ext. 3.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to any of the contact people listed in this section.

SUPPLEMENTARY INFORMATION: The PRA and its implementing regulations require Federal agencies to display OMB control numbers and inform respondents of their legal significance after OMB has approved an agency's information collections. In accordance with those requirements, the Department notifies the public that the following information collections have been approved (or re-approved) by OMB following the Department's submission of an information collection request (ICR):

- OMB Control No. 1810–0681, Title I—Improving the Academic Achievement of the Disadvantaged—Assessment and Accountability for LEP students (final regulations). The expiration date for this information collection is April 30, 2007.
- OMB Control No. 1820–0030, Annual State Application Under Part B of the Individuals with Disabilities Education Act. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0043, Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0517, Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0518, Personnel (in Full-Time Equivalency of Assignments) Employed to Provide Special Education and Related Services for Children with Disabilities. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0521, Report of Children with Disabilities Exiting Special Education. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0600, State and Local Educational Agency Recordkeeping and Reporting Requirements Under Part B of the IDEA. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0621, Report of Children with Disabilities Subject to Disciplinary Removal. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0624, IDEA Part B State Performance Plan and Annual Performance Report. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1820–0677, Report of Dispute Resolution Under Part B of the Individuals with Disabilities Education Act. The expiration date for this collection is August 31, 2009.
- OMB Control No. 1845–0020, Federal Family Education Loan Program Regulations. The expiration date for this collection is December 31, 2008.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 23, 2007.

Margaret Spellings,

Secretary of Education.

[FR Doc. E7–1354 Filed 1–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; American Overseas Research Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.274A.

Dates: Applications Available: January 29, 2007.

Deadline for Transmittal of Applications: March 15, 2007.

Deadline for Intergovernmental Review: May 14, 2007.

Eligible Applicants: Any American overseas research center that is a consortium of United States institutions of higher education that (1) Receives more than 50 percent of their funding from public or private United States sources; (2) has a permanent presence in the country in which the center is located; and (3) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation under section 501(a) of the Code.

Estimated Available Funds: The Administration has requested $1,150,000 for the American Overseas Research Centers Program for FY 2007, which we intend to use for new awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $42,000–$130,000 per year.

Estimated Average Size of Awards: $82,143.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The American Overseas Research Centers (AORC) Program provides grants to any American overseas research center that is a consortium of United States institutions of higher education to enable the center to promote postgraduate research, exchanges, and area studies. AORC grants may be used to pay all or a portion of the cost of establishing or operating a center or program, including the cost of operation and maintenance of overseas facilities; the cost of organizing and managing conferences; the cost of teaching and research materials; the cost of acquisition, maintenance, and preservation of library collections; the cost of bringing visiting scholars and faculty to the center to teach or to conduct research; the cost of faculty and staff stipends and salaries; the cost of faculty, staff, and student travel; and the cost of publication and dissemination of material for the scholarly and general public.

Priorities: In accordance with 34 CFR 75.105(b)(2)(i), we are particularly interested in applications that meet the following invitational priorities.

Invitational Priorities: For FY 2007 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Projects that propose to establish new or to maintain existing overseas immersion language study programs to enhance advanced language training to students, faculty, and postgraduate researchers.

Invitational Priority 2: Applications that propose to establish new or to maintain existing centers in countries where the following critical languages are spoken: Arabic, Chinese, Japanese, Korean, and Russian, as well as the Indic, Iranian, and Turkic language families.

Program Authority: 20 U.S.C. 1128a.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Note: The AORC Program does not have program specific regulations; therefore, applicants are directed to the authorizing statute, section 609 of part A, title VI of the Higher Education Act of 1965, as amended, 20 U.S.C. 1128a.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $1,150,000 for the American Overseas Research Centers Program for FY 2007, which we intend to use for new awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $42,000–$130,000 per year.

Estimated Average Size of Awards: $82,143.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any American overseas research center that is a consortium of United States institutions of higher education that (1) Receives more than 50 percent of their funding from public or private United States sources; (2) has a permanent presence in the country in which the center is located; and (3) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation under section 501(a) of the Code.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street, NW., suite 6083, Washington, DC 20006–8521. Telephone: (202) 502–7634 or by e-mail: *cheryl.gibbs@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer

diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package and instructions for this program. Page Limit: The program narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.

• The page limit does not apply to Part I, the Application for Federal Assistance (SF–424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if:

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: January 29, 2007. Deadline for Transmittal of Applications: March 15, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other submission Requirements* in this notice.

Deadline for Intergovernmental Review: May 14, 2007.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the American Overseas Research Centers Program—CFDA Number 84.274A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the American Overseas Research Centers Program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include: (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to

successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically including all information typically included on the Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact either of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street, NW., Suite 6083, Washington, DC 20006–8521. Fax: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.274A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.274A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.274A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the Application for Federal Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.209(a) and 75.210, and are as follows—

Meets the purposes of the authorizing statute (20 points); Need for project (15 points); Significance (10 points); Quality of the project design (15 points); Quality of project services (10 points); Quality of project personnel (10 points); Adequacy of resources (10 points); and Quality of the project evaluation (10 points). Additional information regarding these criteria is in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. Grantees are required to use the electronic data instrument *Evaluation of Exchange, Language, International, and Area Studies* (EELIAS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measures will be used by the Department in assessing the performance of the American Overseas Research Centers Program:

(1) The percent of projects judged to be successful by the program officer, based on a review of information provided in annual performance reports. The information provided by grantees in their performance reports submitted via EELIAS will be the source of data for this measure.

(2) The percentage of scholars who indicated they were ''highly satisfied'' with the services the Center provided.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6083, Washington, DC 20006–8521. Telephone: (202) 502–7634 or by e-mail: *cheryl.gibbs@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: January 24, 2007.

James F. Manning,

Delegated the Authority of the Assistant Secretary for Postsecondary Education.

[FR Doc. 07–354 Filed 1–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A]

Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to fund down the grant slate for the Strengthening Institutions Program.

SUMMARY: The Secretary intends to use the grant slate developed for the Strengthening Institutions Program in Fiscal Year (FY) 2006 to make new grant awards in FY 2007. The Secretary takes this action because a significant number of high-quality applications remain on last year's grant slate. The actual level of funding for the FY 2007 program, if any, depends on final Congressional action.

FOR FURTHER INFORMATION CONTACT: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–6450. *Telephone:* (202) 502–7548 or *via Internet: maria.carrington@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 2006, we published a notice in the **Federal Register** (71 FR 29130) inviting applications for new awards under the Strengthening Institutions Program.

We received a significant number of applications for grants under the Strengthening Institutions Program in FY 2006 and made 34 new grants. Because such a large number of high-quality applications were received, many applications that were awarded high scores by peer reviewers did not receive funding for FY 2006.

Limited funding is available for new awards under this program in FY 2007. To conserve funding that would have been required for a peer review of new grant applications and use those funds to support grant activities, we will select grantees in FY 2007 from the existing slate of applicants. This slate was developed during the FY 2006 competition using the selection criteria, application requirements, and definitions referenced in the May 19,

2006 notice. No changes to the selection criteria, application requirements, and definitions will be required by this action.

Note: All non-funded applicants scoring 95 and above in the FY 2006 competition MUST apply for Title III eligibility. Final funding decisions will be made based upon the amount available for new awards. As announced in a notice published in the **Federal Register** on January 8, 2007(71 FR 760) the closing date for Title III eligibility submissions is March 9, 2007.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1057–1059d.

Dated: January 24, 2007.

James F. Manning,

Delegated the Authority of Assistant Secretary for Postsecondary Education.

[FR Doc. E7–1352 Filed 1–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the FE–746R, ''The Natural Gas Import and Export Authorization Application and Monthly Reports,'' which includes the elimination of the associated quarterly reporting requirement, to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

DATES: Comments must be filed by February 28, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Sarah Garman, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Sarah_P._Garman@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kara Norman. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*kara.norman@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Kara Norman may be contacted by telephone at (202) 287–1902.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms FE–746R, ''The Natural Gas Import and Export Authorization Application and Monthly Reports''.
2. Department of Energy.
3. OMB Number 1901–0294.
4. Three-year extension.
5. Mandatory.
6. DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import or export natural gas to file an application containing the basic information about the scope and nature of the proposed import/export activity. Historically, FE has collected information on a quarterly and monthly basis regarding import and export transactions. That information has been used to ensure compliance with the terms and conditions of the authorizations. In addition, the data are used to monitor North American gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.
7. Business or other for-profit (or other appropriate type of respondents).
8. 10,080 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1))

Issued in Washington, DC, January 23, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E7–1319 Filed 1–26–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8274–1]

Public Record Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency

(EPA), Office of Underground Storage Tanks (OUST) is advising the public that on January 22, 2007 EPA issued the public record grant guidelines and subsequently made the guidelines available on EPA's Web site. In this notice, EPA is publishing the public record grant guidelines in their entirety. EPA developed the public record grant guidelines as required by Section 9002 of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act of 2005.

DATES: On January 22, 2007, EPA issued and subsequently posted the public record grant guidelines on EPA's Web site. EPA is notifying the public via this notice that the public record grant guidelines are available as of January 29, 2007.

ADDRESSES: EPA posted the public record grant guidelines on our Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final.* You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 301–604–3408. *Ask for:* Grant Guidelines To States for Implementing the Public Record Provision of the Energy Policy Act of 2005 (EPA–510–R–07–001, January 2007).

FOR FURTHER INFORMATION CONTACT: Paul Miller, EPA's Office of Underground Storage Tanks, at *miller.paul@epa.gov* or (703) 603–7165.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, entitled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs, require major changes to the programs, and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Section 9002 of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act, requires EPA to require states that receive Subtitle I funding to maintain, update, and make available to the public a record of federally regulated USTs. As a result of that requirement, EPA worked with states and other UST stakeholders to develop draft public record grant guidelines. In June 2006, EPA released a draft of the public record grant guidelines. EPA considered comments and, subsequently on January 22, 2007, issued the public record grant guidelines. EPA will incorporate these guidelines into grant agreements between EPA and states. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register**.

Grant Guidelines to States for Implementing the Public Record Provision of the Energy Policy Act of 2005

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; January 2007.

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Overview of the Public Record Grant Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines to implement the public record provision in Section 9002(d) of the

Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Subsection (c) of Section 1526 of the Energy Policy Act amends Section 9002 in Subtitle I of the Solid Waste Disposal Act to add requirements for states to maintain, update, and make available to the public a record of underground storage tanks (USTs) regulated under Subtitle I. EPA must require each state that receives funding under Subtitle I to meet the public record requirements. Subsection (d) of Section 9002 in Subtitle I requires EPA to prescribe the manner and form of the public record, and says that, to the maximum extent practicable, the public record of a state must include:

- The number, sources, and causes of underground storage tank releases in the state.
- The record of compliance by underground storage tanks in the state with Subtitle I or a state program approved under Section 9004 of Subtitle I.
- Data on the number of underground storage tank equipment failures in the state.

EPA's Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements a state receiving Subtitle I funding (hereafter referred to as ''state'') must meet in order to comply with the public record requirements in Section 9002(d).

What Is in These Guidelines?

These guidelines describe the minimum requirements for public record that a state's underground storage tank program must meet in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include: developing and updating the public record; making the record available to the public; describing the minimum public record content; ensuring data quality; and demonstrating and ensuring compliance with these guidelines.

When Do These Guidelines Take Effect?

A state must develop a program for gathering information and begin gathering data to meet the public record requirement by October 1, 2007.

Public Record Requirements

What Underground Storage Tanks Do These Guidelines Apply To?

For purposes of providing the public information on percent compliance and numbers of underground storage tanks, facilities, and inspections, states must, at a minimum, include underground storage tanks regulated under Subtitle I that satisfy the definition of underground storage tank in 40 CFR 280.12, except for those tanks identified in 40 CFR 280.10(b) and 280.10(c) as excluded or deferred underground storage tanks. Underground storage tanks used for emergency power generation [deferred from release detection by 280.10(d)] must be included as part of the public record.

For purposes of providing the public information on confirmed releases and sources and causes of releases, states must, at a minimum, include underground storage tanks regulated under Subtitle I that satisfy the definition of underground storage tank in 40 CFR 280.12, except for those tanks identified in 40 CFR 280.10(b) as excluded underground storage tanks. Underground storage tanks deferred in 40 CFR 280.10(c) and those used for emergency power generation [deferred from release detection by 280.10(d)] must be included as part of the public record.

How Does a State Implement These Guidelines?

A state implements these guidelines by making a record containing information consistent with these guidelines available to the public.

A state may choose to make a record that contains more comprehensive information than described in these guidelines available to the public. For example, a state may choose to make a record available to the public that includes underground storage tanks regulated by the state but not regulated under Subtitle I.

When Must States Develop, Make Available, and Update the Public Record?

In 2007, state underground storage tank programs must:

DEADLINES AND REQUIREMENTS IN 2007

Not later than	States must
September 30, 2007	Develop a program for gathering information required for the public record.
October 1, 2007	Begin gathering data to meet the public record requirement.

In 2008 and beyond, state underground storage tank programs must:

DEADLINES AND REQUIREMENTS IN 2008 AND BEYOND

Not later than	States must
September 30, 2008	Complete first year's data gathering.
October 1, 2008 (and beyond)	Begin next year's data gathering.
December 31, 2008	Make the public record available to the general public. For consistency with data states submit to EPA, states should make available a public record that includes data from October 1 through September 30 of each year.
September 30, 2009 (and beyond)	Complete next year's data gathering.
On or before the same day of the next year (for example, on or before December 31, 2009).	Update the public record at least annually.

How Must States Make the Public Record Available?

EPA believes state underground storage tank programs should use a multi-pronged approach to making the public record available. At a minimum, states must make the public record available in electronic format and make the public record available to those who request the information but do not have electronic access. Each state must develop a Web site that does one of the following:

• The public record is posted on or downloadable from the Internet. This option may be an interactive Web site that retrieves the information, a Web site that lists the information, or a file that is downloadable in electronic format.

• The Web site describes how to receive an electronic copy of the public record (for example via e-mail).

In addition, some people may not have access to electronic information. Therefore, states must also make the public record available to those who request the information, but do not have electronic access. Examples of ways to make the public record available in this instance include paper copies or a public reading room.

What Must the Public Record Contain?

States must provide a public record that, at a minimum, contains the summary information described below. Appendix A contains a sample public record with summary information. In addition to summary information, the public record must also provide the public with instructions on how to obtain site-specific underground storage tank information on compliance and releases.

Minimum Public Record Content—At a minimum, the following information must be included in a state's public record.

• Public Record Posted Date—This is the date the public record document was made available to the public.

• Total UST Facilities—This is the total number of underground storage tank facilities in the state containing one or more regulated underground storage tanks that are not permanently closed. Please note that states may separate facilities with temporarily-closed underground storage tanks from total facilities as long as they provide both numbers.

• Total USTs—This is the total number of regulated underground storage tanks in the state that are not permanently closed. Please note that states may separate temporarily-closed underground storage tanks from total underground storage tanks, as long as they provide both numbers.

• Number Of UST Facilities Inspected—This is the total number of underground storage tank facilities in the state that had an on-site compliance inspection conducted in accordance with EPA inspection guidelines applicable at the time of the inspection, and conducted between the inspection period dates described below.

• Inspection Period Dates—These are the two dates between which the inspections listed above were conducted. At a minimum, these dates must cover the 12 month period for which the public record data is gathered.

• Percent Compliance—This is the percent of underground storage tank facilities inspected between the inspection period dates described above that were in compliance with EPA or state regulations during the most recent facility inspection. At a minimum, compliance means the facility met the combined performance measure (release detection and release prevention compliance) of the significant operational compliance (SOC) requirements described in EPA's September 30, 2003 memorandum (and attachments) to EPA regions and States. This document is available on the Internet at: *http://www.epa.gov/oust/cmplastc/soc.htm.* At a minimum, the percent compliance must cover the 12 month period for which the public record data is gathered.

• Compliance Measurement and Reported UST Universe Statements—These statements describe:

—The basis for the compliance determination. For example, the compliance rate may be based on the combined performance measure (release detection and release prevention compliance) for significant operational compliance with state or federal underground storage tank requirements. If a state is reporting compliance based on criteria that are more stringent than the combined performance measure for significant operational compliance, the state also must identify that their compliance reporting is more stringent and may list those more stringent requirements.

—The universe of underground storage tanks and facilities that the public record is based on. At a minimum, the public record must contain information on underground storage tanks to which the guidelines apply (see page 2 for applicability). If a state provides information to the public based on deferred underground storage tanks or underground storage tanks that are regulated only by the state, then the statement must also provide the public with that information.

• Release Reporting Period Dates—These are the two dates between which the confirmed releases reported in the public record document occurred. At a minimum, these dates must cover the 12 month period for which the public record data is gathered.

• Number Of Confirmed Releases—This is the number of confirmed releases that occurred between the release reporting period dates described above. The term confirmed release has the same definition used in the semiannual activity reports with one exception—confirmed releases from hazardous substance underground storage tank systems must also be included in the public record. The confirmed release definition for the semiannual activity reports is available on the internet at: *http://www.epa.gov/oust/cat/perfmeas.pdf.* Please note that states may provide petroleum and hazardous substance confirmed releases separately as long as they provide both numbers.

• Number And Percent Of Releases By Source—This is the number and percent of releases attributed to each source where the source of release is known. See the information in the Number, Sources, And Causes Of UST Releases And Data On Equipment Failures section below for descriptions of sources.

• Number And Percent Of Causes By Source—This is the number and percent of causes attributed to each known source. See the information in the Number, Sources, And Causes Of UST Releases And Data On Equipment Failures section below for descriptions of causes.

Number, Sources, And Causes Of UST Releases And Data On Equipment Failures—The release source and cause data that must be included in the public record are those associated with a reportable release in 40 CFR Part 280.50 or applicable state regulation. States are not required to provide information on releases where the source is not known. The data on sources and causes of releases also includes data on equipment failures, as required by Section 9002(d)(2)(C) of Subtitle I, by providing the piece of equipment that failed (release source) and the reason for the failure (release cause). The following contains the minimum list of sources and causes, including those associated with equipment failures, and provides a short description for each:

• Sources

—Tank—This term means the tank that stores the product and is part of the underground storage tank system.
—Piping—This term means the piping and connectors running from the tank or submersible turbine pump to the dispenser or other end-use equipment. It does not include vent, vapor recovery, or fill lines.
—Dispenser—This term includes the dispenser and equipment used to connect the dispenser to the piping. For example, a release from a suction pump or components located above the shear valve would be considered a release from the dispenser.
—Submersible Turbine Pump (STP) Area—This term includes the submersible turbine pump head (typically located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the tank.
—Delivery Problem—This term identifies releases that occurred during product delivery to the tank. Typical causes associated with this source are spills and overfills.
—Other—Use this option when the release source does not fit into one of the above categories. For example, releases from vent lines, vapor recovery lines, and fill lines would be included in this category.

• Causes

—Spill—Use this cause when a spill occurs. For example, spills may occur when the delivery hose is disconnected from the fill pipe of the tank or when the nozzle is removed from the vehicle at the dispenser.
—Overfill—Use this cause when an overfill occurs. For example, overfills may occur from the fill pipe at the tank or when the nozzle fails to shut off at the dispenser.
—Physical Or Mechanical Damage (Phys/Mech Damage)—Use this cause for all types of physical or mechanical damage except corrosion as described below. Some examples of physical or mechanical damage include: a puncture of the tank or piping, loose fittings, broken components, and components that have changed dimension (for example, elongation or swelling).
—Corrosion—Use this cause when a metal tank, piping, or other component has a release due to corrosion (for steel, corrosion takes the form of rust). This is a specific type of physical or mechanical damage.
—Installation Problem—Use this cause when the problem is determined to have occurred specifically because the underground storage tank system was not installed properly. Note that these problems may be difficult to determine.
—Other—Use this option when the cause is known but does not fit into one of the above categories. For example, accidentally or intentionally putting regulated substances into a monitoring well would be included in this category.
—Unknown—Use this option only when the cause is not known.

Appendix B contains a sample release data-gathering form.

How Must States Ensure the Quality of the Public Record Data?

To the maximum extent practicable, states must provide accurate and complete data to the public. States must use quality assurance practices that will: Produce data of quality adequate to meet project objectives; minimize reporting of inaccurate data; and allow for timely updates to the data as changes or corrections occur.

How Will States Demonstrate Compliance With These Guidelines?

After September 30, 2007, the date by which states must develop a program for gathering the public record information, and before receiving future grant funding, states must provide one of the following to the appropriate EPA regional office:

• For a state that has met the requirements for public record, the state must submit a certification indicating that the state meets the requirements in the guidelines.

• For a state that has not yet met the requirements for public record, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:

—A description of the state's activities to date to meet the requirements in the guidelines,
—A description of the state's planned activities to meet the requirements, and
—The date by which the state expects to meet the requirements.

EPA may verify state certifications of compliance through site visits, record reviews, or audits as authorized by 40 CFR Part 31.

How Will EPA Enforce States' Compliance With the Requirements in These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other UST compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information About the Public Record Grant Guidelines

Visit the EPA Office of Underground Storage Tanks' Web site at *www.epa.gov/oust* or call 703–603–9900.

Background About the Energy Policy Act of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (titled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act—the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at further reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions required implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: *http://www.epa.gov/oust/fedlaws/nrg05_01.htm.*

BILLING CODE 6560–50–P

Appendix A - Sample Public Record – Summary Information On Underground Storage Tanks (USTs)

General Information

Public Record Posted Date: _____

Total Number Of UST Facilities: _____
Total Number Of USTs: _____

Summary Information For On-Site Inspections

Number Of UST Facilities Inspected: _____
Inspection Period Dates: _____ To: _____
Percent Compliance (Combined Measure): _____

Note: Tank, facility, and on-site inspection information is based on [state: describe universe of tanks]. On-site inspections measure compliance with _____ (SOC, state regulations, Subtitle I, etc.). [States may list more stringent requirements here.]

Summary Information For Releases

Number Of Confirmed UST Releases: _____
Release Reporting Period Dates: _____ To: _____

Summary Information For Release Sources And Causes

Source			Cause													
			Spill		Overfill		Phys/Mech Damage		Corrosion		Install Problem		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Tank																
Piping																
Dispenser																
STP																
Delivery Problem																
Other																
Totals																

= number, % = percent of total number

Note: Release, source and cause information is based on [state: describe universe of tanks]. Source and cause data were collected using [state: describe data-gathering technique(s)].

[**State**: Provide information here on how the public can obtain site-specific UST information on compliance and releases.]

Appendix B - Sample Release Data-Gathering Form On Underground Storage Tanks (USTs)

(for known sources of release)

General Information

UST Facility Name Or ID: _____

Date Release Was Confirmed: _____

Source Information – Where did the release come from?

- ☐ **Tank**
- ☐ **Piping**
- ☐ **Dispenser**
- ☐ **Submersible Turbine Pump**
- ☐ **Delivery Problem**
- ☐ **Other (specify)** _____

Cause Information – Why did the release occur?

- ☐ **Spill**
- ☐ **Overfill**
- ☐ **Corrosion**
- ☐ **Physical Or Mechanical Damage**
- ☐ **Install Problem**
- ☐ **Other (specify)** _____
- ☐ **Unknown**

Dated: January 22, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E7–1340 Filed 1–26–07; 8:45 am]

BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8274–2]

Financial Responsibility and Installer Certification Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public that on January 22, 2007 EPA issued the financial responsibility and installer certification grant guidelines and subsequently made the guidelines available on EPA's Web site. In this notice, EPA is publishing the financial responsibility and installer certification grant guidelines in their entirety. EPA developed the financial responsibility and installer certification grant guidelines as required by Section 9003(i)(2) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1530 of the Energy Policy Act of 2005.

DATES: On January 22, 2007, EPA issued and subsequently posted the financial responsibility and installer certification grant guidelines on EPA's Web site. EPA is notifying the public via this notice that the financial responsibility and installer certification grant guidelines are available as of January 29, 2007.

ADDRESSES: EPA posted the financial responsibility and installer certification grant guidelines on our Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final*. You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 301–604–3408. Ask for: Grant Guidelines To States For Implementing The Financial Responsibility And Installer Certification Provision Of The Energy Policy Act Of 2005 (EPA–510–R–07–002, January 2007).

FOR FURTHER INFORMATION CONTACT: Maricruz MaGowan, EPA's Office of Underground Storage Tanks, at *magowan.maricruz@epa.gov* or 703–603–7175.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, titled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs, require major changes to the programs, and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Section 9003(i) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1530 of the Energy Policy Act, requires EPA to require states that receive Subtitle I funding to impose measures to protect groundwater from contamination by USTs through use of either evidence of financial responsibility and installer certification or secondary containment. As a result of that requirement, EPA worked with states, tribes, other Federal agencies, tank owners and operators, UST equipment industry, and other stakeholders to develop draft financial responsibility and installer certification grant guidelines. In May 2006, EPA released a draft of the financial responsibility and installer certification grant guidelines. EPA considered comments and, subsequently on January 22, 2007, issued the financial responsibility and installer certification grant guidelines. EPA will incorporate these guidelines into grant agreements between EPA and states. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines. (Please note that EPA issued the secondary containment grant guidelines in November 2006 and published a notice of availability in the November 22, 2006 **Federal Register** [Volume 71, Number 225]. See EPA's Web site: *http://www.epa.gov/oust/fedlaws/final_sc.htm* to view the secondary containment grant guidelines.)

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 *et seq*..) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). The Congressional Review Act, 5 U.S.C. 801 *et seq*., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register**.

Grant Guidelines to States for Implementing the Financial Responsibility and Installer Certification Provision of the Energy Policy Act of 2005

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; January 2007.

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Overview of Financial Responsibility and Installer Certification Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states and industry, has developed these grant guidelines to implement the financial responsibility and installer certification provision in Section 9003(i) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, which is part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1530 of the Energy Policy Act amends Section 9003 in Subtitle I of the Solid Waste Disposal Act to add requirements for additional measures to protect groundwater from contamination. State underground storage tank (UST) programs that receive funding under Subtitle I must meet, at a minimum, one of the following:

1. *Evidence Of Financial Responsibility And Certification*—A person that manufactures an underground tank or piping for an underground storage tank system or installs an underground storage tank system must maintain evidence of financial responsibility under Section 9003(d) of Subtitle I in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under Section 9003, Subtitle I. In addition, underground storage tank installers must: be certified or licensed; have the installation certified or approved; install the underground storage tank system compliant with a code of practice and in accordance with the manufacturer's instructions; or use another method determined to be no less protective of human health and the environment.

2. *Tank And Piping Secondary Containment*—Each new or replaced underground tank, or piping connected to any such new or replaced tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of an existing underground tank or existing piping connected to the underground tank, the secondary containment and monitoring shall apply only to the specific underground tank or piping being replaced, not to other underground tanks and connected pipes comprising such system. In addition, each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. These requirements do not apply to repairs meant to restore an underground tank, pipe, or dispenser to operating condition. (These requirements are described in the secondary containment guidelines, EPA 510–R–06–001, published on November 15, 2006, *http://www.epa.gov/oust/fedlaws/final_sc.htm*.)

What Is In These Guidelines?

These guidelines describe the minimum requirements for financial responsibility and installer certification that a state's underground storage tank program must contain in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include definitions, requirements, criteria, and options for states choosing to implement the financial responsibility and installer certification provision.

When Do These Guidelines Take Effect?

States receiving Subtitle I funding must implement either the financial responsibility and installer certification requirements described in these guidelines or the secondary containment requirements (EPA 510–R–06–001, published on November 15, 2006, *http://www.epa.gov/oust/fedlaws/final_sc.htm*) by February 8, 2007.

Requirements For Financial Responsibility and Installer Certification

What Tanks Do These Guidelines Apply To?

These guidelines apply to underground storage tank systems regulated under Subtitle I, except those excluded by regulation at 40 CFR Part 280.10(b) and those deferred by regulation at 40 CFR 280.10(c).

How Does A State Implement These Guidelines?

A state implements these guidelines by:

- Requiring financial responsibility for all manufacturers of underground storage tanks or piping for an underground storage tank system that is installed in the state,
- Requiring financial responsibility and installer certification for all installers of underground storage tank systems in the state, and
- Developing processes and procedures for financial responsibility and installer certification provisions that, at a minimum, meet the requirements in these guidelines.

The state must meet these guidelines by February 8, 2007. States may choose to be more stringent than these minimum requirements.

What Requirements Must A State Program Include To Meet The Financial Responsibility And Installer Certification Provision?

State requirements must, at a minimum, include the following provisions:

A. Persons Affected

State financial responsibility and installer certification requirements must clearly define who will be covered by them. At a minimum, the following persons must be covered:

- A person that manufactures an underground storage tank or piping for an underground storage tank system that is installed in the state (manufacturer).[1]
- A person that installs part or all of an underground storage tank system in the state (installer).

The term ''underground storage tank system'' has the same definition as contained in 40 CFR 280.12.

Manufacturers or installers that demonstrate to the state that they already maintain financial responsibility as the owner or operator of an underground storage tank do not need to maintain financial

[1] This requirement does not apply to manufacturing of underground ancillary equipment or containment systems.

responsibility as a manufacturer or installer for that same underground storage tank.

In states where a single installer of an underground storage tank system is identified by the state (*e.g.*, for purposes of obtaining a permit), that person is the one required to maintain financial responsibility for that installation and meet the certification requirements described in these guidelines. Where there is not a single installer on record, states must define those who must maintain evidence of financial responsibility and meet the certification requirements described in these guidelines.

B. Amount and Scope of Coverage

States must require a minimum of:

- $1 million per occurrence and $2 million annual aggregate for manufacturers to cover the costs of corrective action of a release from a regulated underground storage tank or piping, as appropriate, caused by improper manufacturing, and
- $1 million per occurrence and $2 million annual aggregate for installers to cover the costs of corrective action of a release from a regulated underground storage tank system due to improper installation.

These limits do not include legal defense costs.

C. Length of Coverage

States must require that:

- Manufacturers of tanks and piping maintain financial responsibility coverage for 30 years after installation, or until the underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, whichever of these events comes first.
- Installers of underground storage tank systems maintain financial responsibility for ten years after installation, or until the underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, or whichever of these events comes first.

States may allow manufacturers and installers to obtain financial responsibility mechanisms with annual or other limited policy periods, as long as the manufacturer/installer maintains uninterrupted coverage for the full period required by these guidelines (30 years or ten years, as appropriate). These types of mechanisms are currently available. For example, insurance is currently available in various forms, including occurrence-based with annual policy periods or claims-made with annual policy periods coupled with appropriate retroactive and extended reporting periods.

D. Allowable Mechanisms

States may allow manufacturers and installers to use a variety of financial mechanisms as long as these mechanisms meet all of the following four criteria:

1. The mechanism must be valid and enforceable;
2. The mechanism must be issued by a provider that is licensed, registered, and/or otherwise qualified to provide such coverage in the state;
3. The mechanism must pay for the costs of corrective action, up to the coverage limits described above, resulting from a release from a regulated underground storage tank or tank system caused by improper manufacture or installation, as appropriate; and
4. The mechanism must require that the provider notify the insured and the state of cancellation or non-renewal of the mechanism, within a time frame determined to be reasonable by each state.

These mechanisms may include the ones currently used by tank owners and operators to meet their financial responsibility requirements under 40 part 280.94 to 280.103.

However, not all of these current mechanisms may be appropriate for use in all instances to meet the new manufacturer and installer financial responsibility requirement, and some may have to be modified to meet this new requirement and be consistent with State regulations.

In developing their requirements, states are encouraged to consider, as a model, provisions in 40 CFR part 280, Subpart H, that reasonably prevent gaps in coverage, such as in cases of cancellation or non-renewal by the financial responsibility provider, bankruptcy of the installer/manufacturer, or incapacity or liquidation of the financial responsibility provider.

If a State chooses to use a State assurance fund to provide financial responsibility for manufacturers and/or installers, the state must develop a separate fund, independent from its existing state assurance fund (*i.e.*, State fund used to provide financial responsibility for underground storage tank owners and operators). This requirement for a separate fund is to ensure the financial integrity of existing State assurance funds.

If a State allows a mechanism that includes a deductible, the state must either require first dollar coverage or that manufacturers and installers maintain separate financial responsibility coverage for the deductible amount.

E. Notification and Recordkeeping

State requirements must contain a provision or provisions requiring a system of notification and record keeping to and/or by the manufacturer, installer, owner, operator, and/or the State program. These provisions must reasonably address, at a minimum, the following questions:

- To whom and when must the evidence of financial responsibility be provided?
- How and where must manufacturers and installers maintain evidence of financial responsibility?
- If an underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, who needs to notify the manufacturer/installer?
- If the manufacturer or installer files for bankruptcy or ceases operation for any other reason, whom should they notify and when?
- Any other question(s) that the state may deem appropriate.

F. Installer Certification

The state must require that a person that installs an underground storage tank system meet one of the following:

- Be certified or licensed by the tank and piping manufacturer;
- Be certified or licensed by the EPA Administrator or a State, as appropriate;
- Have their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;
- Have their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;
- Be compliant with a code of practice developed by a nationally-recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or
- Be compliant with another method that is determined by the Administrator or a state, as appropriate, to be no less protective of human health and the environment.

Note: These requirements are similar to the requirements already found under 40 CFR 280.20(d), 280.20(e), and 280.33(a). Most, if not all, state underground storage tank regulations already cover these requirements for new installations and repairs. However, States must also require that persons who replace or add equipment after the initial installation of the underground storage tank system meet the installer certification requirements.

How is the Liability of Owners and Operators Affected?

These provisions do not affect or alter the liability of any owner or operator of an underground storage tank system. Owners and operators must still comply with all applicable technical regulations. For example, they must comply with the requirements to report releases, perform necessary corrective action, and maintain financial responsibility to pay for corrective action and for compensation of third parties for bodily injury and property damage.

What Enforcement Authority Must States Have for Financial Responsibility and Installer Certification?

At a minimum, States must have comparable enforcement authorities for violations of their financial responsibility and installer certification requirements as they have for violations of current underground storage tank requirements.

How Will States Demonstrate Compliance With These Guidelines?

After February 8, 2007, the effective date of the financial responsibility and installer certification requirements, and before receiving future grant funding, States must provide one of the following to EPA:

- For a State that has met the requirements for financial responsibility and installer certification, the State must submit a certification indicating that the State meets the requirements in the guidelines.
- For a State that has not yet met the requirements for financial responsibility and installer certification, the State must provide a document that describes the State's efforts to meet the requirements. This document must include:

—A description of the State's activities to date to meet the requirements in the guidelines;
—A description of the State's planned activities to meet the requirements; and
—The date by which the State expects to meet the requirements.

EPA may verify State certification of compliance through site visits, record reviews, or audits, as authorized by 40 CFR part 31.

How Will EPA Enforce States' Compliance With The Requirements In These Guidelines?

As a matter of law, each State that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other underground storage tank compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR part 31.43, as necessary and appropriate.

For More Information About The Financial Responsibility And Installer Certification Grant Guidelines

Visit the EPA Office of Underground Storage Tanks Web site at *http://www.epa.gov/oust* or call 703–603–9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act—the original legislation that created the underground storage tank (UST) program. These amendments significantly affect Federal and State underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and States will work closely with tribes, other Federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: *http://www.epa.gov/oust/fedlaws/nrg05_01.htm*.

Dated: January 22, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E7–1341 Filed 1–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8273–8]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The purpose of this teleconference is to discuss and approve an initial set of recommendations on EPA's role in the sustainable development of biofuels. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/calnacept.htm.*

DATES: NACEPT will hold a public teleconference on Thursday, February 15, 2007 at 3 p.m.–4:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the U.S. EPA Office of Cooperative Environmental Management at 655 15th Street, NW., Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above by February 9, 2007. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to gain access to the conference

room on the day of the meeting must contact Sonia Altieri at (202) 233–0061 or *altieri.sonia@epa.gov* by Friday, February 9, 2007.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov.* To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 18, 2007.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E7–1335 Filed 1–26–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Duane A. Kurokawa and Rosella Kurokawa, both of Wolf Point, Montana, to acquire shares of Western Holding Company of Wolf Point, Wolf Point, Montana, and thereby indirectly acquire shares of Western Bank of Wolf Point, Montana.

Board of Governors of the Federal Reserve System, January 23, 2007

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–1293 Filed 1–26–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of Twenty-First Century Financial Services Company, Tulsa, Oklahoma, and thereby indirectly acquire ONB Bank and Trust Company, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, January 22, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–1292 Filed 1–26–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Partnership Community Bancshares, Inc., Tomah, Wisconsin; to become a bank holding company by acquiring 91 percent of the voting shares of The Bancorp of Tomah, Wisconsin, and thereby indirectly acquire First Bank, Tomah, Wisconsin.

Board of Governors of the Federal Reserve System, January 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–1332 Filed 1–26–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation Winston–Salem, North Carolina; to acquire 100 percent of the voting securities of Coastal Financial Corporation, Myrtle Beach, South Carolina, and thereby indirectly acquire Coastal Federal Bank, Myrtle Beach, South Carolina, and engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y; Coastal Planners Holding Corporation, Myrtle Beach, South Carolina, and thereby indirectly acquire Coastal Retirement, Estate & Tax Planners, Inc., Myrtle Beach, South Carolina, and engage in financial planning and tax preparation activities, pursuant to section 225.28 (b)(6)(vi) of Regulation Y; and Coastal Federal Holding Corporation, Wilmington, Delaware, and thereby indirectly acquire Coastal Real Estate Investment Corporation, Sunset Beach, North Carolina, and engage in acquiring and servicing loan activities, pursuant to section 225.28 (b)(1)of Regulation Y.

Board of Governors of the Federal Reserve System, January 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.E7–1331 Filed 1–26–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 071 0002]

Hospira, Inc., and Mayne Pharma Limited; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 20, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Hospira and Mayne Pharma, File No. 071 0002,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Inglefield, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2637.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 18, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/01/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Containing Consent Orders (''Consent Agreement'') from Hospira Inc. (''Hospira'') and Mayne Pharma Ltd. (''Mayne''), which is designed to remedy the anticompetitive effects of Hospira's acquisition of Mayne. Under the terms of the Consent Agreement, the companies would be required to assign and divest to Barr Pharmaceuticals, Inc. (''Barr'') the Mayne rights and assets necessary to manufacture and market the following generic injectable pharmaceuticals: (1) Hydromorphone hydrochloride (''hydromorphone''); (2) nalbuphine hydrochloride (''nalbuphine''); (3) morphine sulfate (''morphine''); (4) preservative-free morphine; and (5) deferoxamine mesylate (''deferoxamine'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to a Scheme Implementation Agreement dated September 20, 2006, Hospira intends to acquire all of the outstanding shares of Mayne for approximately $2 billion. Both parties manufacture and sell generic pharmaceuticals in the United States. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for the manufacture and sale of the following generic injectables: (1) Hydromorphone; (2) nalbuphine; (3) morphine; (4) preservative-free morphine; and (5) deferoxamine (''the Products''). The proposed Consent Agreement remedies the alleged violations by replacing in each of these markets the lost competition that would result from the acquisition.

The Products and Structure of the Markets

Hospira's proposed acquisition of Mayne would strengthen Hospira's position in generic injectable pharmaceuticals and provide it with a stronger pipeline of generic products. Injectable pharmaceuticals are not close substitutes for oral drugs because they are used when a patient is unable to ingest pills or capsules or when an immediate onset of action is required and the patient cannot wait for the treatment to pass through the gastrointestinal system. The companies overlap in a number of generic injectable pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in five of the overlap markets.

The transaction would reduce the number of competing generic suppliers in five already concentrated markets. When the number of suppliers of a generic is small, the number of suppliers has a direct and substantial effect on generic pricing, as each additional supplier can have a competitive impact on the market. Because there are (or would be) multiple generic equivalents for each of the Products absent the proposed acquisition, the branded versions would not significantly constrain the generics' pricing.

For one of the generic injectable products at issue, hydromorphone, Hospira and Mayne currently are two of only three suppliers offering the product. In the remaining four markets, Mayne is one of a limited number of suppliers capable of, and in the process of, entering these markets. As a result, the proposed acquisition would eliminate important future competition in these markets.

Injectable hydromorphone is a narcotic opioid analgesic used to relieve moderate to severe pain, both acute and chronic, and is classified by the U.S. Drug Enforcement Administration (''DEA'') as a Schedule II narcotic. The branded product, Dilaudid-HP, is manufactured and sold by Abbott Laboratories Inc. In 2006, sales of generic injectable hydromorphone exceeded $39 million. Only three companies compete in the generic injectable hydromorphone market: Hospira, Baxter Healthcare Corp. (''Baxter''), and Mayne. Hospira is the market leader with a market share of approximately 60 percent. Mayne and Baxter are the only other suppliers, with market shares of 25 percent and 15 percent, respectively. After Hospira's acquisition of Mayne, Hospira's market share would increase from 60 percent to approximately 85 percent, and Baxter would be the only other competitor.

Nalbuphine is an injectable opioid analgesic used to relieve moderate to severe pain in patients. Hospira currently is the only supplier of generic injectable nalbuphine in the United States. Mayne is in the process of entering this market and is one of a limited number of firms capable of entering this market in a timely manner. The proposed acquisition would eliminate Mayne's entry into the injectable nalbuphine market.

Injectable morphine is a widely-used opioid analgesic for the treatment of moderate to severe, acute and chronic pain, and is classified by the DEA as a Schedule II narcotic. Hospira is the leading supplier of injectable morphine, and provides a full-line of preservative and preservative-free morphine products in various strengths, sizes, and delivery mechanisms. Baxter and Amphastar Pharmaceuticals, Inc. are the only other suppliers of injectable morphine in the United States. Mayne is in the process of entering this market and is one of a limited number of suppliers capable of entering this market in a timely manner. The proposed acquisition would eliminate Mayne's entry into the injectable morphine market. Absent the proposed transaction, Mayne would have been the only competitor to Hospira for the 50 mg/ml strength presentations of injectable morphine.

Injectable preservative-free morphine, unlike injectable morphine, is used when the drug is delivered to the intrathecal or epidural space next to the nerves in a patient's spine. Currently, only Hospira and Baxter sell preservative-free morphine in the United States in the manner of generic suppliers. Mayne is in the process of entering this market and is one of a limited number of suppliers capable of entering this market in a timely manner. The proposed transaction would eliminate Mayne's entry into the injectable preservative-free morphine market.

Injectable deferoxamine is an iron chelator used to treat acute iron poisoning or chronic iron overload. Hospira and Teva Pharmaceutical Industries Ltd. are the only suppliers of generic injectable deferoxamine in the United States. Mayne is in the process of entering this market and is well-positioned to enter this market in a timely manner. The proposed acquisition would eliminate Mayne's entry into the injectable deferoxamine market.

Entry

Entry into the markets for the manufacture and sale of the Products would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Developing and obtaining U.S. Food and Drug Administration (''FDA'') approval for the manufacture and sale of each of the Products takes at least two (2) years due to substantial regulatory, technological, and intellectual property barriers.

Effects of the Acquisition

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic injectable hydromorphone, generic injectable nalbuphine, generic injectable morphine, generic injectable preservative-free morphine, and generic injectable deferoxamine. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Here, the evidence shows that, given the small number of suppliers, the prices of the generic pharmaceutical product at issue decrease with the entry of each additional competitor. Evidence gathered during our investigation indicates that anticompetitive effects—whether unilateral or coordinated—are likely to result from the decrease in the number of independent competitors in the markets at issue that would be a consequence of the proposed acquisition.

In the market for generic injectable hydromorphone, the proposed acquisition would leave only two current competitors: The combined firm and one other company. The evidence indicates that the presence of three independent competitors in these markets allows customers to negotiate lower prices, and that a reduction in the number of competitors would allow the merged entity and the other market participant(s) to raise prices.

The competitive concerns in the market for generic injectable hydromorphone can be characterized as both unilateral and coordinated in nature. Certain conditions in the relevant market may reduce the ability of suppliers to reach and maintain an agreement on price. For example, bids to GPOs typically specify prices and rebates for an array of drugs and presentations, and there are long term contracts. Nevertheless, the weight of the evidence leads to the conclusion that the transaction will increase the likelihood of coordination. The transparency of awards by GPOs makes coordination among the suppliers, especially customer allocation, more likely to occur, because deviation from an agreement would be relatively easy to detect. Also, the fact that there will be only two suppliers after the proposed acquisition is an important consideration in evaluating the likelihood of coordination.

The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects. With fewer bidders, the probability of winning a given bid is higher and the incentives to bid aggressively are lower. With transactions that lead to a significant decrease in the number of bidders for a given drug, such as the instant one, a significant increase in the price charged to customers is likely to result. Such effects are likely to be particularly large in the market for generic injectable hydromorphone, where there would be only two competitors after Hospira's acquisition of Mayne.

The proposed acquisition also would cause significant anticompetitive harm to consumers by eliminating potential competition between Hospira and Mayne in the markets for the manufacture and sale of generic injectable nalbuphine, generic injectable morphine, generic injectable preservative-free morphine, and generic injectable deferoxamine. In each of these markets, there are no more than three current suppliers, and Mayne is poised to enter in the near future. Mayne's independent entry into these markets would likely result in lower prices. The proposed transaction would eliminate that independent entry, and hence would leave prices at levels that are higher than would prevail absent the acquisition.

The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Hospira and Mayne are required to divest certain rights and assets related to the relevant products to a Commission-approved acquirer no later than ten (10) days after the acquisition. Specifically, the proposed Consent Agreement requires that the parties assign and divest all of the Mayne rights and assets for the Products to Barr.

The acquirers of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Barr is a reputable generic injectable pharmaceutical manufacturer and is well-positioned to compete effectively in each of the relevant product markets. Following its recent acquisition of Pliva d.d., Barr markets several injectable pharmaceutical products in the United States and has multiple manufacturing facilities, an established sales organization, FDA and DEA regulatory expertise, and a robust injectable product pipeline. Moreover, Barr will not present competitive problems in any of the markets in which it will acquire a divested asset because it currently does not compete in those markets. With its resources, capabilities, and good reputation, Barr is well-positioned to replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that Barr is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Barr is not acceptable, the parties must unwind the sale and divest the Products within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Product assets.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Hospira and Mayne to provide transitional services to enable the Commission-approved acquirers to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Hospira and Mayne.

The Commission has appointed R. Owen Richards of Quantic Regulatory Services, LLC (''Quantic'') to oversee the asset transfer and to ensure Hospira and Mayne's compliance with all of the provisions of the proposed Consent Agreement. Mr. Richards is President of Quantic and has several years of experience in the pharmaceutical industry. He is a highly-qualified expert on FDA regulatory matters and currently advises Quantic clients on achieving satisfactory regulatory compliance and interfacing with the FDA. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Hospira and Mayne to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–1291 Filed 1–26–07; 8:45 am]

BILLING CODE 6750–01–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Unmodified SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is publishing this second round notice and requesting comment on an unmodified Standard Form (SF) 278 for extension of approval for three years by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OGE is making no changes to the form at this time. As in the past, OGE will ask agencies to notify SF 278 filers of two updates to the information contained in the existing SF 278.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by February 28, 2007.

ADDRESSES: Comments should be sent to Brenda Aguilar, OMB Desk Officer for OGE, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316; FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Paul D. Ledvina, Records Officer, Information Resources Management Division at the Office of Government Ethics; Telephone: 202–482–9281; TDD: 202–482–9293; FAX: 202–482–9237; E-mail: *pdledvin@oge.gov*. A copy of a blank SF 278 may be obtained, without charge, by contacting Mr. Ledvina. Also, a copy of a blank SF 278 is available through the Forms, Publications & Other Ethics Documents section of OGE's Web site at *http://www.usoge.gov.*

SUPPLEMENTARY INFORMATION: The Office of Government Ethics intends to submit, shortly after publication of this notice, the unmodified Standard Form 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for extension of approval for three years by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 expires at the end of February 2007 (the clearance will be further extended during OMB review once OGE submits the complete package requesting renewed paperwork clearance of the SF 278 to OMB). The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), is the sponsoring agency for the Standard Form 278. OGE will not request General Services Administration (GSA) standard forms clearance for this extension because no modification to this standard form is proposed.

In accordance with section 102 of the Ethics Act, 5 U.S.C. app. section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch on an annual basis and once they terminate their reportable positions, for conflicts of interest review and public disclosure. The SF 278 is also completed by individuals who are nominated by the President for high-level executive branch positions requiring Senate confirmation, new entrants to other public reporting positions in the executive branch, and candidates for U.S. President and Vice President. The financial information collected under the statute and regulations relates to: Assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source other than the U.S. Government—all subject to various reporting thresholds and exclusions.

Current Version of the SF 278

The Office of Government Ethics is proposing no modifications to the SF 278 at this time. OGE will continue to make the unmodified SF 278 available to departments and agencies and their reporting employees through the Forms, Publications & Other Ethics Documents section of OGE's Web site. This provides filers with two electronic options for preparing their report on a computer (as well as a downloadable blank form). There is also a link on the OGE Web site to another electronic version of the SF 278 maintained by the Department of Defense. In addition, GSA separately maintains two electronic versions of the form on its Web site (*http://www.gsa.gov*).

The Office of Government Ethics has determined that at this time, electronic filing of the SF 278 using an Internet-based system will not be permitted. A printout and manual signature of the form are still required unless otherwise specifically approved by OGE.

Agency Notification of Updates

There are two ways in which the content of the current SF 278 report form is affected. The first concerns adjustments in the gifts/reimbursements reporting thresholds. The second involves revised routine use language contained in the Privacy Act Statement of the form. OGE is proposing no revisions to the SF 278, but will continue to ask executive branch departments and agencies to inform SF 278 filers, through cover memorandum or otherwise, of these two updates when the existing March 2000 edition of the SF 278 report forms are provided for completion. See OGE's August 25, 2003 memorandum to designated agency ethics officials (DO–03–015), posted in the ''DAEOgrams'' section of the OGE Web site. Information regarding these changes is also posted along with the SF 278 in the forms section of OGE's Web site. In addition, OGE will post on its Web site an updated summary of one of the Privacy Act routine uses on the report form (see discussion below).

Gifts/Reimbursements Reporting Thresholds

Every three years OGE issues final rule amendments that revise the executive branch financial disclosure regulation to increase the aggregation and exception thresholds for reporting of gifts, reimbursements and travel expenses for the public and confidential report systems. See 5 U.S.C. app. section 102(a)(2)(A) & (B). The OGE aggregation threshold provides a limit below which the total value of gifts and reimbursements received from a source is not reportable. The exception threshold limits the value of individual gifts and reimbursements that must be counted toward the aggregation threshold.

OGE's threshold adjustments are tied to the ''minimal value'' threshold of the Foreign Gifts and Decorations Act, as determined by GSA under 5 U.S.C. 7342. Since 2002, OGE has asked agencies to notify filers of the SF 278 of the updated adjustments to the reporting thresholds for gifts and reimbursements. Effective January 1, 2005, GSA raised the ''minimal value'' threshold under 5 U.S.C. 7342 to $305 or less for the three-year period 2005–2007. See 70 FR 2317–2318 (part V) (January 12, 2005). Following GSA's action, OGE advised agencies of the adjusted thresholds and revised its financial disclosure regulation to reflect the increase in the thresholds for SF 278 reporting of gifts and travel reimbursements received from any one source to ''more than $305'' for the aggregation level for reporting and to ''$122 or less'' for the de minimis aggregation exception threshold. See the March 17, 2005 OGE memorandum to

designated agency ethics officials (DO–05–007) and 70 FR 12111–12112 (March 11, 2005). Both GSA and OGE rulemakings and OGE's memorandum are posted on the OGE Web site.

Privacy Act Statement

In addition, OGE has updated the OGE/GOVT–1 Privacy Act system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records). See 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). As a result, the Privacy Act Statement, which includes summaries of the routine uses on page 11 of the instructions on the SF 278, is affected. As explained in the above-noted OGE memorandum DO–03–015 and the SF 278 notice posted on OGE's Web site, the system notice update added three new routine uses applicable to SF 278 reports. Moreover, OGE will also ask agencies to inform filers of an update needed to the summary of the sixth listed routine use on the form in their periodic notifications to filers of changes to the SF 278. See revised routine use ''h'' at 68 FR 3100 for the OGE/GOVT–1 records system notice. OGE has already updated that same sixth routine use summary for three of its other forms, the OGE Form 201, the OGE Form 450, and the OGE Optional Form 450-A. These forms are posted in the forms section of the OGE Web site. A summary of the updates relevant to that SF 278 statement will be included with the paperwork clearance submission to OMB.

SF 278 Filers

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. These reports are routinely reviewed by the agencies concerned. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation and incumbents in and terminees from such positions.

Reporting Burden

The Office of Government Ethics estimates, based on the agency ethics program questionnaire responses for 2003–2005, that an average of some 23,971 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. (Questionnaire responses for 2006 are not yet available.) Most of those executive branch filers are current Federal employees at the time they file. However, OGE estimates that approximately 2,475, or just over 10.3 percent, of the branchwide total of SF 278 filers over each of the next three years (2007–2009) will be members of the public. This annual estimate includes: (a) Private citizen Presidential nominees to executive branch positions subject to Senate confirmation (and their private representatives—lawyers, accountants, brokers and bankers); (b) other private citizen prospective new entrants to such reportable positions; (c) those who file termination reports (or combination annual and termination reports) from such positions after their Government service ends; and (d) Presidential and Vice Presidential candidates. The OGE estimate includes an anticipated total of some 3,900 SF 278 reports (which yields an annualized average of 1,300 per year) that will be filed in connection with the fall 2008 Presidential election and following transition. In OGE's first round SF 278 paperwork notice (noted below), the statistics OGE used to compute the reporting burden on the public over the next three years mistakenly omitted the estimated additional private citizen filers expected during the forthcoming Presidential election/transition.

The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same as previously reported, at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee and terminee report forms processed in executive branch agencies, and those report forms processed by the OGE, including private citizen Presidential and Vice Presidential candidates report forms, is 7,425 hours (rather than the 3,525 hours as mistakenly indicated in the first round notice).

The current average yearly paperwork hour burden for the SF 278 form, based on OGE's prior 2003 annual estimate for the 2003–2005 period, is 1,347 hours. This burden estimate was based upon an anticipated annual average of 449 SF 278 report forms (x 3 hours per form) to be received at OGE only from private citizen/representative nominee and terminee filers, plus Presidential and Vice Presidential candidates whose report forms are also reviewed by OGE. OGE's new annual burden estimate for the 2007–2009 period has been adjusted to cover private citizen SF 278 filers anticipated throughout the executive branch, in accordance with updated OMB guidance for such a branchwide form.

Consideration of Comments

On November 3, 2006, OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified SF 278. See 71 FR 64708–64710. OGE received only one response to that notice, which was critical of the Government, and provided no specific comment about the SF 278 form. One other person requested a copy of the form.

In this second notice, public comment is again invited on the SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of the quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: January 23, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E7–1317 Filed 1–26–07; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Amendment To Extend the January 24, 2003, Declaration Regarding Administration of Smallpox Countermeasures, as Amended on January 24, 2004, January 24, 2005, and January 24, 2006

AGENCY: Office of the Secretary (OS), (HHS).

ACTION: Notice.

SUMMARY: Concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and United States Government facilities abroad continues to exist. The January 24, 2003, declaration regarding administration of smallpox countermeasures is revised to incorporate statutory definitions from the Smallpox Emergency Personnel Protection Act of 2003 and extended for one year until and including January 23, 2008.

DATES: This notice and the attached amendment are effective as of January 24, 2007.

FOR FURTHER INFORMATION CONTACT: Rear Admiral William C. Vanderwagen, Deputy Assistant Secretary for Preparedness and Response and Chief

Preparedness Officer, Office of the Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224(p) of the Public Health Service Act, which was established by section 304 of the Homeland Security Act of 2002 and amended by section 3 of the Smallpox Emergency Personnel Act of 2003 (''SEPPA''), is intended to alleviate certain liability concerns associated with administration of smallpox countermeasures and, therefore, ensure that the countermeasures are available and can be administered in the even of a smallpox-related actual or potential public health emergency such as a bioterrorist incident.

On January 24, 2003, due to concerns that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad, the Secretary issued a declaration making section 224's legal protections available. The declaration was effective until and including January 23, 2004; it included in section VI a number of definitions, which are no longer appropriate because of the statutory amendments in section 3 of SEPPA.

On January 24, 2004, the Secretary amended the definitions contained in the January 24, 2003 declaration in light of the statutory amendments in section 3 of SEPPA because such definitions were no longer appropriate, and extended the declaration for one year until January 23, 2005. On January 24, 2005, the Secretary extended the declaration for another year through January 23, 2006. On January 24, 2006, the Secretary extended the declaration for another year through January 23, 2007. Pursuant to section 224(p)(2)(A), the Secretary issues the amendment below to extend for one year, up to and including January 23, 2008, the January 24, 2003 declaration, as amended.

Amendment To Extend January 24, 2003 Declaration Regarding Administration of Smallpox Countermeasures.

I. *Policy Determination:* The underlying policy determinations of the January 24, 2003 declaration continue to exist, including the heightened concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad.

II. *Amendment of Declaration:* I, Michael O. Leavitt, Secretary of the Department of Health and Human Services, have concluded in accordance with the authority vested in me under section 224(p)(2)(A) of the Public Health Service Act, that a potential bioterrorist incident makes it advisable to extend the January 24, 2003 declaration regarding administration of smallpox countermeasures until and including January 23, 2008. The January 24, 2003, declaration as hereby amended may be further amended as circumstances require.

III. *Effective Dates:* This extension is effective January 24, 2007 until and including January 23, 2008. The effective period may be extended or shortened by subsequent amendment to the January 24, 2003 declaration as hereby amended.

Dated: January 24, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–348 Filed 1–24–06; 11:24 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: ORR Quarterly Performance Report, Form ORR–6.

OMB No.: 0970–0036.

Description: As required by Section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, social services, and targeted assistance programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations require that States and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

Respondents: States, local, and Tribal governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6	48	4	3.875	744

Estimated Total Annual Burden Hours: 744.

In compliance with the requirements of section 3506 (c)(2)(A) of the Paperwork Reduction act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 23, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–343 Filed 1–26–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–12]

Notice of Submission of Proposed Information Collection to OMB; HUD Initiative for the Removal of Regulatory Barriers

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is to be submitted by grant applicants to obtain higher rating points based on association with successful efforts to remove regulatory barriers which may impede the production of affordable housing.

DATES: *Comments Due Date:* February 28, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2510–0013) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's website at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Initiative for the Removal of Regulatory Barriers.

OMB Approval Number: 2510–0013.

Form Numbers: HUD–27300.

Description of the need for the Information and Its Proposed Use: This information is to be submitted by grant applicants to obtain higher rating points based on association with successful efforts to remove regulatory barriers which may impede the production of affordable housing.

Frequency Of Submission: On occasion.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
8,500	1		3		25,500

Total Estimated Burden Hours: 25,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 24, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–1353 Filed 1–26–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–11]

Notice of Submission of Proposed Information Collection to OMB; Application and Re-Certification Packages for Approval of Nonprofit Organizations in FHA Activities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection requirement covers the criteria that a nonprofit organization must meet to participate in Single Family programs. In general, a nonprofit organization must be HUD-approved and meet specific requirements to maintain approval and remain on the Nonprofit Organization Roster (Roster). This includes an application, affordable housing plan, annual reports, and required record keeping. Participants must submit a new application and updated affordable housing plan every two years to remain on the Roster.

DATES: *Comments Due Date:* February 28, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0540) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application and Re-certification Packages for Approval of Nonprofit Organizations in FHA Activities.

OMB Approval Number: 2502–0540.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection requirement covers the criteria that a nonprofit organization must meet to participate in Single Family programs. In general, a nonprofit organization must be HUD-approved and meet specific requirements to maintain approval and remain on the Nonprofit Organization Roster (Roster). This includes an application, affordable housing plan, annual reports, and required record keeping. Participants must submit a new application and updated affordable housing plan every two years to remain on the Roster.

Frequency of Submission: On occasion, biennially, annually.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
583	1		10.55		6,156

Total Estimated Burden Hours: 6,156.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 23, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–1355 Filed 1–26–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–10]

Notice of Submission of Proposed Information Collection to OMB; Capital Advance Program Submission Requirements for the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons With Disabilities Capital Advance Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection facilitates the processing of all Sections 202 and 811 capital advance projects from firm commitment through final closing. Second, it allows for the collection of information under the mixed-finance section of this program so that those owners who wish to partner with for-profit limited partners can participate in the development and management of supportive housing. And lastly, it allows for the collection of information to satisfy the reporting requirements for owners who receive predevelopment grant funds.

DATES: *Comments Due Date:* February 28, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0470) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. This notice also lists the following information:

Title Of Proposal: Capital Advance Program Submission Requirements for

the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons with Disabilities Capital Advance Program.

OMB Approval Number: 2502–0470.

Form Numbers: HUD–2453.1–CA, 2554, 90163–CA, 90164–CA, 90165–CA, 90166A–CA, 90166–CA, 90167–CA, 90169–CA, 901691–CA, 90170–CA, 90171–CA, 90172–CA, 90172B–CA, 90173–A–CA, 90173–B–CA, 90173–C–CA, 90174–CA, 90175–CA, 90175.1–CA, 90176–CA, 90177–CA, 90178–CA, 90179–CA, 91732A–CA, 92434–CA, 92435–CA, 92466.1–CA, 92452, 92452–A, 92452–CA, 92476–A–CA, 92004–F, 92433–CA, 92443–CA, 92450–CA, 92466–CA, 92476–A, 93432–CA, 93566–CA, and 93566.1–CA.

Description Of The Need For The Information And Its Proposed Use: This collection facilitates the processing of all Sections 202 and 811 capital advance projects from firm commitment through final closing. Second, it allows for the collection of information under the mixed-finance section of this program so that those owners who wish to partner with for-profit limited partners can participate in the development and management of supportive housing. And lastly, it allows for the collection of information to satisfy the reporting requirements for owners who receive predevelopment grant funds.

Frequency Of Submission: On occasion, monthly.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
260	1		32.35		8,413

Total Estimated Burden Hours: 8,413.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 23, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–1356 Filed 1–26–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Refuge

Hobe Sound National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Hobe Sound National Wildlife Refuge in Martin County, Florida.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Hobe Sound National Wildlife Refuge are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environment Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for fishing, wildlife observation, wildlife photography, environmental education and interpretation, research, and pets are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the Refuge Manager, Hobe Sound National Wildlife Refuge, 13640 SE. Federal Highway, Hobe Sound, Florida 33455. The plan may also be accessed and downloaded from the Fish and Wildlife Service's Web site: *http://southeast.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: Hobe Sound National Wildlife Refuge is in Martin County, Florida, about 20 miles south of Stuart, Florida, and 30 miles north of West Palm Beach, Florida. The refuge covers a total of 1,160 acres within the acquisition boundary. The refuge consists of a 300-acre River Lagoon. The primay vegetation classes on the Mainland Tract consist mainly of sand pine scrub, wetland, mangrove, and hammock habitats. The Jupiter Island Tract has a 3.5-mile sea turtle nesting beach—one of the most productive in Florida—and several hardwood hammocks and mangrove wetlands. Annually, more than 120,000 visitors participate in refuge and nature center activities.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 45-day public review and comment period was announced in the **Federal Register** on January 26, 2004, (69 FR 3590). The plan and Environmental assessment identified and evaluated four alternatives for managing the refuge over the next 15 years. Alternative 1, the ''No Action'' alternative, would have continued current management of the refuge within the approved acquisition boundary. Under Alternative 2 (Ecosystem Emphasis), refuge lands would be protected, maintained, and enhanced by adding more staff, equipment, and facilities in order to restore and manage the unique habitats and more than 40 threatened and endangered species. Alternative 3 (Biological Emphasis) would add more staff, equipment, and facilities in order to maximize the biological program. Alternative 4 (Public Use Emphasis) would add more staff, equipment, and facilities in order to foster the refuge's public use program.

Based on the environmental assessment and the comments received, the Service adopted a modified version of Alternative 2 (Ecosystem Emphasis) as its preferred alternative. This alternative was considered to be the most effective for meeting the purposes of the refuge by enhancing habitat for threatened and endangered species, and by downsizing selected projects to help maintain the unique qualities of the refuge that make it so special to the community. The overriding concern reflected in this alternative is that wildlife conservation assumes first priority in refuge management; wildlife-dependent recreational uses (e.g., fishing, wildlife observation, wildlife photography, and environmental education and interpretation) will be emphasized and encouraged as long as they are compatible with wildlife conservation. Altnerative 2 best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

FOR FURTHER INFORMATION CONTACT: Margo Stahl, Refuge Manager, Hobe Sound National Wildlife Refuge Complex, *telephone:* 772/546–6141; *fax:* 772/545–7572; *e-mail: margo_stahl@fws.gov*; or by writing to the Refuge Manager at the address in the **ADDRESSES** section.

Authority: This notice is published under the authority of the National Wildlife Refuge

System Improvement Act of 1997, Public Law 105–57.

Dated: June 5, 2006.

Sam D. Hamilton,

Regional Director.

[FR Doc. 07–347 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Ten Listed Northeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 4(c)(2)(A) of the Endangered Species Act of 1973 (ESA), we, the U.S. Fish and Wildlife Service (Service), announce a 5-year review of 10 northeastern species. A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the original listing of the species as endangered or threatened. Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(B) of the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than March 30, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035, to the attention of Ms. Mary Parkin. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address. Information may also be sent to *Mary_Parkin@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Parkin at the above address or at 617–876–6173.

SUPPLEMENTARY INFORMATION: Under the ESA 16 U.S.C. 1531 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the list (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the endangered Maryland darter (Etheostoma sellare), eastern cougar (Puma (=Felis) concolor couguar), Virginia fringed mountain snail (Polygyriscus virginianus), Virginia big-eared bat (Corynorhinus (=Plecotus) townsendii virginianus), Hay's Spring amphipod (Stygobromus hayi), American burying beetle (Nicrophorus americanus), and Lee County Cave isopod (Lirceus usdagalun), as well as the threatened Knieskern's beaked-rush (Rhyncospora knieskernii), bog turtle (Clemmys muhlenbergii), and small whorled pogonia (Isotria medeoloides).

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the following endangered species since their original listings: The Maryland darter in 1967 (32 FR 4001) with Critical Habitat in 1984 (49 FR 34228–34232); eastern cougar in 1973 (38 FR 14678); Virginia fringed mountain snail in 1978 (43 FR 28932–28935); Virginia big-eared bat in 1979 with Critical Habitat (44 FR 69206–69208); Hay's Spring amphipod in 1982 (47 FR 5425–5427); American burying beetle in 1989 (54 FR 29652–29655); and the Lee County Cave isopod in 1992 (57 FR 54722–54726). In addition, we are requesting submission of any such information that has become available since the original listing of the following species as threatened: The Knieskern's beaked-rush in 1991 (56 FR 32978 32983); and bog turtle in 1997 (62 FR 59605–59623); as well as the revised listing of the small whorled pogonia as threatened in 1994 (59 FR 50852–50857).

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (A) Species biology, including but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections—including but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

If you wish to provide information for this 5-year review, you may submit your comments and materials to Ms. Mary Parkin (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review, by appointment, during regular business hours (see **ADDRESSES** section). Individual respondents may request that we withhold their name and/or home address, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531).

Dated: December 4, 2006.

Richard O. Bennett,

Regional Director, Northeast Region, Fish and Wildlife Service.

[FR Doc. E7–1315 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability for the McNary and Umatilla National Wildlife Refuges Draft Comprehensive Conservation Plan and Environmental Assessment and Notification of Public Open House Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and notification of public open house meetings.

SUMMARY: The Fish and Wildlife Service (Service) has completed a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for the McNary and Umatilla National Wildlife Refuges (Refuges). It is available for public review and comment. The Draft CCP/EA describes the Service's proposal for managing the Refuges for the next 15 years. Draft compatibility determinations for public uses are available for review with the Draft CCP/EA.

DATES: Public comments on the Draft CCP/EA are requested by February 23, 2007 (see **ADDRESSES** for delivery options). Three public open house meetings will be held see **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: Address comments on the Draft CCP/EA to: Greg Hughes, Project Leader, Mid-Columbia River National Wildlife Refuge Complex, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196; or e-mail *FW1PlanningComments@fws.gov.* Please use ''McNary/Umatilla CCP'' in the subject. Additional information concerning the Refuges can be found on the Internet at *http://www.fws.gov/midcolumbiariver/.* Comments may also be submitted at the public open house meetings see **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Greg Hughes, Project Leader, (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969 (NEPA). Copies of the Draft CCP/EA on compact diskette are available upon request from the Refuge Complex at phone number (509) 371–9212. Copies of the Draft CCP/EA may be reviewed at the Mid-Columbia River National Wildlife Refuge Complex, 3250 Port of Benton Blvd., Richland, WA. The Draft CCP/EA is also available for viewing and downloading on the Internet at *http://www.fws.gov/midcolumbiariver/.* Printed copies will be available for review at the following libraries.

1. Richland Public Library, 955 Northgate Drive, Richland, WA.
2. Hermiston Public Library, 235 E. Gladys Avenue, Hermiston, OR.
3. Walla Walla Public Library, 238 E. Alder St., Walla Walla, WA.
4. Umatilla Public Library, 911 7th St., Umatilla, OR.

Habitat management activities proposed in the Draft CCP/EA include improving the conditions of wetland, riparian, mudflat, and shrub-steppe habitats, with emphasis on reducing invasive species; increasing moist soil habitats beneficial for waterfowl, shorebirds, and other wetland associates; evaluating and, where feasible, enhancing backwater habitats for salmonids; and increasing the amount of grain available for ducks on the Refuges' agricultural lands.

Public use management actions proposed in the Draft CCP/EA include expanding and improving trails, signs, and access areas for wildlife observation; improving the quality of upland bird hunting; implementing some minor trades between sanctuary and hunt areas; continuing waterfowl hunting coordination with the States; improving information available to anglers and boaters; expanding the Umatilla Refuge's environmental education program; improving management of horseback riding; eliminating overnight camping at McNary Refuge; and reducing illegal uses.

Background

Umatilla Refuge encompasses 26,888 acres with units along the Columbia River in both Washington and Oregon. McNary Refuge encompasses approximately 15,894 acres located 30 miles upstream of Umatilla Refuge, near Kennewick, Washington. Habitat types found on both Refuges include shrub-steppe uplands, croplands, woody riparian areas, basalt cliffs, emergent marshes, large marshes, and open water areas of the Columbia River. Several islands are also part of each Refuge. Both Refuges provide important migratory and wintering habitat for numerous bird species especially waterfowl.

Purpose and Need for Action

The purpose of the CCP is to provide reasonable, scientifically-grounded guidance for improving the Refuges' shrub-steppe, riparian, wetland, and cliff-talus habitats for the long-term conservation of native plants and animals and migratory birds, while providing high quality public use programs for hunting, fishing, wildlife observation, photography, and environmental education and interpretation. The Draft CCP/EA identifies appropriate actions to protect and sustain the cultural and biological features of the river islands, the Refuges' wintering waterfowl populations and habitats, the migratory shorebird populations that use the Refuges, and threatened, endangered, or rare species.

Alternatives

The Service identified and evaluated four alternatives for managing the McNary and Umatilla Refuges for the next 15 years, including a No Action Alternative (Alternative 4). Brief descriptions of the alternatives follow.

Alternative 1: Emphasize Migratory Waterfowl Management and Consumptive Public Uses. Under Alternative 1, the Refuges' management focus would be on providing migratory waterfowl with high quality, easily accessible food during both normal and severe winters. This would be accomplished by increasing both crop production and waterfowl food plants. Secure, adequately-sized resting areas would be provided to ensure the health of overwintering and migrating waterfowl. Consumptive public uses such as hunting and fishing would be emphasized, with improvements to facilities and increased opportunities. A State pheasant augmentation/release program would be discontinued, and camping would be discontinued at Madame Dorion Park. Other public uses would continue at approximately their current levels of service.

Alternative 2: Emphasize Migratory Birds, Special Status Species and Wildlife-Dependent Public Uses. Under Alternative 2, the Service's preferred alternative, the Refuges would focus on managing habitat for all migratory birds, and enhancing populations of targeted special status species and their habitats. Habitats for migratory waterfowl, shorebirds, threatened and endangered species, and other native wildlife would be improved. Weed control and reduction, and improving riparian, shrub-steppe, island, and cliff habitats would be emphasized. Wildlife-dependent public uses would also be emphasized, with opportunities for

hunting, fishing, wildlife observation, photography, interpretation, and environmental education maintained or improved from present conditions. A State pheasant augmentation/release program would be discontinued and camping at Madame Dorion Park would be discontinued. Disturbance to island resources would be reduced through implementation of a no-wake zone within 100 feet of Refuge islands. Alternative 2 is the Service's preferred alternative because it best achieves the purpose and need for the CCP while maintaining balance among the varied management needs and programs. Alternative 2 addresses issues and relevant mandates, and is consistent with principles of sound fish and wildlife management.

Alternative 3: Emphasize Native Species Diversity and Nonconsumptive Public Uses. Under Alternative 3, the Refuges' management focus would be on mimicking natural processes, to maintain, enhance, and, where possible, increase native fish, wildlife, and plant diversity representative of historical conditions in the Lower Columbia River Basin. Emphasis would be placed on improving existing island, riverine, and shrub-steppe habitats and restoring modified and/or degraded habitats to a more native condition. Fewer acres would be managed in croplands. Habitat management would contribute to the recovery of threatened, endangered, or rare species such as salmon, steelhead, and long-billed curlews. Hunting and fishing opportunities would be available at most current sites except pheasant and fish stocking would be eliminated, and fewer acres would be managed to provide waterfowl food. Opportunities for wildlife-dependent nonconsumptive uses would be improved and expanded. Camping would be discontinued at Madame Dorion Park. All island areas would be closed to public access during summer.

Alternative 4: No Action Alternative. Alternative 4 is the no action alternative as required under NEPA. It provides a baseline from which to compare Alternatives 1, 2, and 3. Under Alternative 4, the Refuges would continue to maintain, and, where feasible, restore habitat for waterfowl, migratory birds, and State and Federally-listed species. Existing public uses would continue.

Public Comments

Public comments are requested, considered, and incorporated throughout the planning process. Comments on the Draft CCP/EA would be appreciated by February 23, 2007. A previous notice concerning development of this CCP/EA was published in the **Federal Register** on May 24, 2004. Comments on the Draft CCP/EA will be analyzed by the Service and addressed in final planning documents. All comments received from individuals become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA regulations, and Service and Department of the Interior policies and procedures.

Public Open House Meetings

Three Public Open House Meetings will be held to provide people an opportunity to learn more about the alternatives analyzed in the Draft CCP/EA. Public comments will be collected and recorded at the meetings. Meeting dates, times, and locations follow.

1. February 1, 2007, 4 p.m. to 7 p.m., Riverfront Center, 2 Marine Drive, Boardman, Oregon.

2. February 6, 2007, 4 p.m. to 7 p.m., McNary Environmental Education Center, 311 Lake Road, Burbank, Washington.

3. February 8, 2007, 5 p.m. to 8 p.m., Red Lion Hotel, 2525 North 20th Ave., Pasco, Washington.

Dated: January 24, 2007.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E7–1395 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the Humboldt Bay National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Humboldt Bay National Wildlife Refuge Complex (Complex) located in Humboldt and Del Norte Counties of California. The Complex is comprised of Humboldt Bay National Wildlife Refuge and Castle Rock National Wildlife Refuge. This notice advises the public that the Service intends to gather information necessary to prepare a CCP and EA pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act (NEPA). The public and other agencies are encouraged to participate in the planning process by sending written comments on management actions that the Service should consider. The Service is also furnishing this notice in compliance with the Service CCP policy to obtain suggestions and information on the scope of issues to include in the CCP and EA. Opportunities for public input will be announced throughout the CCP/EA planning and development process.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before March 15, 2007.

ADDRESSES: Send written comments or requests to be added to the mailing list to the following address: David Bergendorf, Refuge Planner, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, California 95825–1846. Written comments may also be faxed to (916) 414–6497, or sent by electronic mail to *david_bergendorf@fws.gov*.

FOR FURTHER INFORMATION CONTACT: David Bergendorf, Refuge Planner, at (916) 414–6503 or Eric Nelson, Refuge Manager, at (707) 733–5406.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife, plants and their habitats, the CCP will identify compatible wildlife-dependent recreational opportunities available to the public. The recreational opportunities that will receive priority consideration are hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The planning process will consider many other elements, including cultural resource protection, environmental effects, and administrative resources. Public input

into this planning process is very important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Complex and how the Service will implement management strategies.

Comments received will be used to help develop goals and objectives, as well as identify key issues evaluated in the NEPA document. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Opportunities for public participation will occur throughout the process.

The Service will send Planning Updates to people who are interested in the CCP process. These mailings will provide information on how to participate in the CCP process. Interested federal, state, and local agencies, organizations, and individuals are invited to provide input. The Service expects to complete the CCP in 2008.

Background

The nearly 4,000 acre Humboldt Bay National Wildlife Refuge, located in Humboldt County, consists of several different units within and adjacent to Humboldt Bay and associated watersheds. Castle Rock National Wildlife Refuge is an island of nearly 14 acres in size located approximately eighty miles north of Humboldt Bay and approximately one half mile offshore from Crescent City, California.

Humboldt Bay National Wildlife Refuge was established in 1971 pursuant to the Migratory Bird Conservation Act (16 U.S.C. 715d), the Refuge Recreation Act (16 U.S.C. 460k–460 K.4) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742f [a][4]). Lands within the Refuge have been set aside for use as an inviolate sanctuary, and other management purposes, for migratory birds, for incidental fish and wildlife-oriented recreational development, for the protection of natural resources, for the conservation of endangered species or threatened species and for the development, advancement, management, conservation, and protection of fish and wildlife resources. The Lanphere Dunes unit of Humboldt Bay National Wildlife Refuge was added to the Refuge Boundary in 1997 for the purpose of conserving fish or wildlife which are listed as endangered species or threatened species, and plants 16 U.S.C. 1534 (Endangered Species Act of 1973).

Castle Rock National Wildlife Refuge was established in 1981 for the purpose of conserving fish or wildlife which are listed as endangered species or threatened species, and plants 16 U.S.C. 1534 (Endangered Species Act of 1973).

The Service anticipates a draft CCP and EA to be available for public review and comment in 2007.

Dated: January 23, 2007.

Ken McDermond,

Acting Manager, CA/NV Operations, Sacramento, California.

[FR Doc. E7–1327 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the Klamath Marsh National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an associated environmental assessment for the Klamath Marsh National Wildlife Refuge pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act of 1969, as amended. The Service is providing this notice to advise other agencies, Tribal Governments, and the public of our intentions, and to obtain suggestions and information on the scope of the issues and alternatives to include in the CCP and environmental assessment.

DATES: We must receive comments on or before March 15, 2007.

Public scoping meetings will be held as follows:

(1) Tuesday, February 6, 2007—6 to 8:30 p.m., Shilo Inn Suites Hotel, 2500 Almond Street, Klamath Falls, Oregon 97601.

(2) Wednesday, February 7, 2007—6 to 8:30 p.m., Chiloquin Community Center, 140 1st Ave, Chiloquin, Oregon 97624.

ADDRESSES: Send written comments or requests to be added to the mailing list to the following address: Mark Pelz, Refuge Planner, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846. Written comments may also be faxed to (916) 414–6497, or sent by electronic mail to *fw8plancomments@fws.gov.* Additional information is also available at *http://www.fws.gov/cno/refuges/planning.html.*

FOR FURTHER INFORMATION CONTACT: Mark Pelz, Refuge Planner, at (916) 414–6504 or Carol Damberg, Refuge Manager, at (541) 783–3380.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires the Service to develop a CCP for each National Wildlife Refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife, plants and their habitats, the CCP will identify compatible wildlife-dependent recreational opportunities available to the public. The recreational opportunities that will receive priority consideration are hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Klamath Marsh Refuge was established in 1958 under the authority of the Migratory Bird Conservation Act (16 U.S.C. 715d). The acquisition boundary approved by the Migratory Bird Conservation Commission included 24,418 acres. Between 1958 and 1980, the Service acquired 16,932 acres. In 1988, the Service expanded the acquisition boundary by 28,584 under the authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(b)(1)) and the Emergency Wetland Resources Act of 1986 (16 U.S.C. 3901(b)). Since this expansion, the Service has acquired 24,508 additional acres.

Klamath Marsh Refuge protects a large natural marsh which provides important nesting, feeding, and resting habitat for waterfowl. The surrounding meadowlands are attractive nesting and feeding areas for sandhill crane, yellow rail, and various shorebirds and raptors. The adjacent pine forests also support diverse wildlife including great gray owl and Rocky Mountain elk. Currently, visitor services are limited to wildlife observation and interpretation along established roads, canoeing during the summer in Wocus Bay, and waterfowl hunting in the southern half of the Refuge during the fall.

Comments and concerns received during this scoping process will be used to help identify key issues, develop goals, establish habitat management and public use strategies, and draft

management alternatives. Additional opportunities for public participation will occur throughout the planning process, and details about these opportunities will be provided in special mailings, newspaper articles, and other announcements. Involvement and input from interested Federal, State, and local agencies, Tribal governments, organizations, and individuals is encouraged. We expect to have the draft CCP/EA completed and made available for public review in the spring of 2008 and the CCP process completed in late 2008.

Dated: January 23, 2007.

John Engbring,

Acting Manager, CA/NV Operations, Sacramento, California.

[FR Doc. E7–1323 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Annual National Earthquake Hazards Reduction Program Announcement; Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: United States Geological Survey.

ACTION: Notice of an extension of an Information Collection (1028–0051).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for respondents to submit proposals to support research in earthquake hazard assessments and earthquake occurrence under the Earthquake Hazards Reduction Act of 1977, as amended, Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*, that established the National Earthquake Hazards Reduction Program. This notice also provides the public a second opportunity to comment on the paperwork burden of this requirement.

DATES: Submit written comments by February 28, 2007.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1028–0051). Submit a copy of your comments to the United States Geological Survey, via:

- E-mail USGS at *gd-erp-coordinator@usgs.gov*. Use Information Collection Number 1028–0051, in the subject line.
- *Fax:* 703–648–6717. Identify with Information Collection Number 1028–0051
- Mail or hand-carry comments to the United States Geological Survey; Earthquake Hazards Program; MS905 National Center; Reston, Virginia 20192. Please reference ''Information Collection 1028–0051'' in your comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lemersal, National Earthquake Hazards Program (703) 648–6716. You may also contact Ms. Lemersal to obtain a copy, at no cost, of the ICR, the announcement for grant applications, and the public law that established the National Earthquake Hazards Reduction Program.

SUPPLEMENTARY INFORMATION: On November 1, 2006, a **Federal Register** notice was published (Volume 71, Number 211, pages 64290–64291) providing the public 60 days to comment on this information collection. No responses were received.

The public now has a second chance to comment on this information collection. Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB Control Number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazard assessments and earthquake occurrence. This information will be used as the basis for selection and award of projects meeting the program objectives. Final reports of research findings are required for each funded proposal.

Bureau form number: None.

Frequency: Annual proposals, final reports.

Description of respondents and grant recipients: Educational institutions and profit and non-profit organizations.

Annual applicants: 250.

Annual grants awarded: 120

Annual Burden hours for applicants and final reports for grantees: 12,300 hours.

Bureau clearance officer: Fred Travnicek, 703–648–7231.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lemersal, U.S. Geological Survey, MS905 National Center, Reston, Virginia 20192 (703) 648–6716.

Dated: January 23, 2007.

P. Patrick Leahy,

Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 07–355 Filed 1–26–06; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0060).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for ''Mine, Development, and Mineral Exploration Supplement, USGS Form 9–4000–A.'' This notice also provides the public a second opportunity to comment on the paperwork burden of this ICR.

DATES: Submit written comments by February 28, 2007.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1028–0060).

Submit a copy of your comments to the Department of the Interior, USGS, via:

- E-mail *atravnic@usgs.gov.* Use Information Collection Number 1028–0060 in the subject line.
- *FAX:* (703) 648–7069. Use Information Collection Number 1028–0060 in the subject line.

• Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–0060 in your comments.

FOR FURTHER INFORMATION CONTACT: Imogene P. Bynum at (703) 648–7960. Copies of the collection of information and the form can be obtained by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Mine, Development, and Mineral Exploration Supplement.

OMB Control Number: 1028–0060.

Form Number: 9–4000–A.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, education programs, and the general public. Response are voluntary. No questions of a ''sensitive'' nature are asked.

Frequency: Annual.

Estimated Number and Description of Respondents: Approximately 617 nonfuel mineral producers and exploration operations industry.

Annual burden hours: 463.

Estimated Reporting and Reocordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 29, 2006, we published a **Federal Register** notice (71 FR 51208 (announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments on the notice.

Bureau clearance officer: Alfred Travnicek, 703–648–7231.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 07–377 Filed 1–26–06; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting to OMB the information collection, titled Navajo Partitioned Lands Grazing Regulations Permits, OMB Control Number 1076–0162 for renewal; or, for review and approval. The purpose of this data collection is to collect information for 25 CFR Part 161 Navajo Partitioned Lands Grazing Regulations as required by the Paperwork Reduction Act.

DATES: Submit comments on or before February 28, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov*.

Please send a copy of your comments to James R. Orwin, Bureau of Indian Affairs, Office of Trust Services, Division of Natural Resources, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240, or by Fax to (202) 219–0006.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from James R. Orwin, (202) 208–6464 at the Bureau of Indian Affairs Central Office in Washington, DC.

SUPPLEMENTARY INFORMATION: This collection of information is authorized under Public Law 103–177, the ''American Indian Agricultural Resource Management Act,'' as amended. Tribes, tribal organizations, individual Indians, and those entering into permits with tribes or individual Indians submit information required by the regulation. The information is used by the Bureau of Indian Affairs to determine:

(a) Whether or not a permit for grazing may be approved or granted;

(b) The value of each permit;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of permit and trespass.

A request for comments on this information collection request appeared in the **Federal Register**on October 30, 2006 (71 FR 63345). No comments were received.

Request for Comments

The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

OMB Approval Number: 1076–0162.

Title: Navajo Partitioned Lands Grazing Regulations Permits, 25 CFR Part 161.

Brief description of collection: Information is collected for the Navajo Partitioned Lands Grazing program from respondents who supply all necessary information needed to approve use of the lands, such as a grazing permit which includes: name, address, range unit requested, number of livestock,

season of use, livestock owner's brand, kind of livestock, mortgage holder information, ownership of livestock, and requested term of use.

Type of review: Renewal.

Respondents: Possible respondents include: individual tribal members, individual non-Indians, individual tribal member-owned business, non-Indian owned businesses, tribal governments and land owners. Response is mandatory for respondents who wish to obtain a grazing permit.

Number of Respondents: 700.

Estimated Time per Response: 23 minutes.

Frequency of Response: Annually and as needed.

Total Annual Responses: 3,200.

Total Annual Hourly Burden to Respondents: 1,227 hours.

Dated: January 23, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–1294 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, March 7 and 8, 2007, in Ukiah, California. On March 7, the council will convene at 10 a.m. at the BLM Ukiah Field Office, 2550 North State St., Ukiah, and depart for a field tour of public lands at Cow Mountain. On March 8, the council convenes at 8 a.m. in the Conference Room of the Ukiah Field Office. The council will hear public comments at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Rich Burns, BLM Ukiah Field Office manager, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics include a proposal for RAC involvement in developing recreation area business plans, a report on Redding Field Office interest in acquiring Pacific Gas and Electric lands, management issues at the Stornetta Public Lands on the Mendocino Coast, and development of a new management plan for public lands on Cow Mountain in Lake and Mendocino counties. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: January 22, 2007.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E7–1296 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PH–029H; HAG 07–0052]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior, Burns District.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting Thursday, February 8 from 8 a.m. to 3:30 p.m., at the U.S. Bureau of Land Management (BLM) Burns District Office, 28910 Hwy 20 West in Hines.

Agenda items for the 1-day meeting include an update on the Off-Highway Vehicle/Transportation Strategy for Oregon and Washington public lands; information sharing regarding the Malheur Wild and Scenic River litigation, adaptive management and monitoring, and manipulating livestock behavior; and review of District and Forest Fiscal Year 2007 work plans and Council subgroup and liaison assignments. Council members will also hear updates from the Designated Federal Officials, establish new subgroup and liaison assignments, give liaison and subgroup reports, discuss the Resources and People Camp, and develop agenda items for the May meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 1 p.m. Those who verbally address the SEORAC during the public comment period are asked to also provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

If you have information you would like distributed to RAC members, please send it to Tara Martinak at the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, prior to the start of the meeting. If you send information or general correspondence to anyone at the Burns District Office and would like a copy given to the RAC, please write ''COPY TO RAC'' on the envelope and enclosed document(s).

The SEORAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, SEORAC Facilitator, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4519, or *Tara_Wilson@blm.gov*.

Under the Federal Advisory Committee Act management regulations (41 CFR 102–3.15(b)), in exceptional circumstances an agency may give less than 15 days notice of committee meeting notices published in the **Federal Register**. In this case, this notice is being published less than 15 days prior to the meeting due to scheduling conflicts and difficulty obtaining a secure agenda.

Dated: January 23, 2007.

Dana R. Shuford,

District Manager.

[FR Doc. E7–1324 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of Meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, February 26, 2007 from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Jefferson Hotel, 1200 16th Street, NW., Washington, DC 20036. The Jefferson's phone number is 202–347–2200.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business, February 21, 2007. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. DeLorme* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, February 26, 2007 (8 a.m.–5 p.m.)
8 a.m. *Call to Order & Introductions:*
8:15 a.m. *Old Business:*
Approval of December 11, 2006 Minutes.
Update Pending Litigation.
8:45 a.m. *Program Updates:*
Gathers.
Adoptions.
Facilities.
Forest Service Update.
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. *Program Updates (continued):*
Program Accomplishments.
BLM Response to Advisory Board Recommendations.
Lunch (11:45 a.m.–1 p.m.)
1 p.m. *New Business:*
Break (2:45 p.m.–3 p.m.)
3 p.m. Public Comments.
4 p.m. Board Recommendations.
4:45 p.m. Recap/Summary/Next Meeting/Date/Site.
5 p.m. Adjourn.

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on February 26, 2007 at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on February 26, 2007 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Ramona_DeLorme@blm.gov*. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: January 23, 2007.

Howard Lemm,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. E7–1322 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a

collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart E, ''Oil and Gas Well-Completion Operations.''

DATE: Submit written comments by March 30, 2007.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0067 as an identifier in your message.

- E-mail MMS at *rules.comments@mms.gov*. Identify with Information Collection Number 1010–0067 in the subject line.
- *Fax:* 703–787–1093. Identify with Information Collection Number 1010–0067.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0067'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 et. seq., requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This information collection request (ICR) addresses 30 CFR part 250, Subpart E, Oil and Gas Well-Completion Operations and the associated supplementary Notices to Lessees and Operators (NTL) intended to provide clarification, description, or explanation of these regulations.

Regulations at 30 CFR part 250 implement these statutory requirements. The MMS District Managers analyze and evaluate the information and data collected under Subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, weekly, monthly, annually, and varies by section.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 11,995 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart E & LTL/NTL	Reporting and recordkeeping requirement	Hour burden
502	Request approval not to shut-in well during equipment movement	1 hour
502	Notify MMS of well-completion rig movement on/off platform or from well to well on same platform (Form MMS–144) (reference § 250.403).	Burden included in 1010–0150.
505; 513; 515(a)	Submit forms MMS–123, MMS–124, MMS–125 for various approvals, including remediation procedure for SCP.	Burden included in 1010–0141.
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per completion = 4).	20 minutes
511	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per completion = 2).	6 minutes
512	Request field well-completion rules be established, amended or canceled (on occasion, however, there have been no requests in many years).	1 hour.
514(c); 515(a)	Calculate well-control fluid volume and post near operator's station; submit well-control procedure.	1 hour.
516 tests; 516(i),(j)	Record BOP test results; retain records 2 years following completion of well (when installed; minimum every 7 days; as stated for component); request alternative methods.	¼ hour.

Citation 30 CFR 250 Subpart E & LTL/NTL	Reporting and recordkeeping requirement	Hour burden
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests-biweekly; note: part of BOP test when conducted).	½ hour.
516(e)	Record reason for postponing BOP system tests (on occasion)	10 minutes.
516(f)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per completion = 4).	½ hour.
517(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	9 hours.
517(c); LTL*/NTL	Notify MMS if sustained casing pressure is observed on a well	¼ hour.
LTL/NTL	Report failure of casing pressure to bleed to zero including plan to remediate.	4 hours.
LTL/NTL	Notify MMS when remediation procedure is complete	1 hour.
LTL	Retain complete record of well's casing pressure for 2 years and retain diagnostic test records permanently.	¼ hour.
LTL	Record diagnostic test results	¼ hours.
500–517	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	2 hours.

*LTL dated 13 January 1994.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: January 19, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E7–1288 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0086).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart P, ''Sulphur Operations.''

DATE: Submit written comments by March 30, 2007.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information

Collection Number 1010–0086 as an identifier in your message.

• E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0086 in the subject line.

• *Fax:* 703–787–1093. Identify with Information Collection Number 1010–0086.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0086'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart P, Sulphur Operations.

OMB Control Number: 1010–0086.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.'' These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR Part 250, subpart P, Sulphur Operations, and the associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

Regulations at 30 CFR part 250 implement these statutory requirements. MMS uses the information collected to ascertain the condition of drilling sites for the purpose of preventing hazards inherent in drilling and production operations and to evaluate the adequacy of equipment and/or procedures to be used during the conduct of drilling, well-completion, well-workover, and production operations. For example, MMS uses the information to:

• Ascertain that a discovered sulphur deposit can be classified as capable of production in paying quantities.

• Ensure accurate and complete measurement of production to determine the amount of sulphur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.

• Ensure that the drilling unit is fit for the intended purpose.

• Review expected oceanographic and meteorological conditions to ensure the integrity of the drilling unit (this information is submitted only if it is not otherwise available).

• Review hazard survey data to ensure that the lessee will not encounter geological conditions that present a hazard to operations.

• Ensure the adequacy and safety of firefighting plans.

• Ensure the adequacy of casing for anticipated conditions.

• Review log entries of crew meetings to verify that crew members are properly trained.

• Review drilling, well-completion, and well-workover diagrams and procedures to ensure the safety of the proposed drilling, well-completion, and well-workover operations.

• Review production operation procedures to ensure the safety of the proposed production operations.

• Monitor environmental data during operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies by section, but information concerning drilling, well-completion, and well-workover operations and production is collected only once for each particular activity.

Estimated Number and Description of Respondents: Approximately 1 Federal OCS sulphur lessee.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 903 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden
1600	Submit exploration or development and production plan	Burden in subpart B (1010–0151).
1603(a)	Request determination whether sulphur deposit can produce in paying quantities.	1
1604(f)	Check traveling-block safety device for proper operation weekly and after each drill-line slipping; enter results in log.	¼
1605; 1617; 1618; 1619(b); 1622	Submit forms MMS–123 (Application for Permit to Drill), MMS–124 (Application for Permit to Modify), Form MMS–125 (End of Operations Report).	Burden in subpart D (1010–0141).
1605(b)(3)	Submit data and information on fitness of drilling unit	4

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden
1605(c)	Report oceanographic, meteorological, and drilling unit performance data upon request.*.	1
1605(d)	Submit results of additional surveys and soil borings upon request.*.	1
1605(e)(5)	Request copy of directional survey (by holder of adjoining lease).*.	1
1605(f)	Submit application for installation of fixed drilling platforms or structures.	Burden in subpart I (1010–0149).
1607	Request establishment, amendment, or cancellation of field rules for drilling, well-completion, or well-workover.	8
1608	Submit well casing and cementing plan or modification	5
1609(a)	Pressure test casing; record time, conditions of testing, and test results in log.	2
1610(d)(8)	Request exception to ram-type blowout preventer (BOP) system components rated working pressure.	1
1611(b); 1625(b)	Request exception to water-rated working pressure to test ram-type and annular BOPs and choke manifold.	1
1611(d)(3); 1625(d)(3)	Record in driller's report the date, time, and reason for postponing pressure testings.	10 minutes
1611(f); 1625(f)	Request exception to recording pressure conditions during BOP tests on pressure charts.*.	1
1611(f), (g); 1625(f), (g)	Conduct tests, actuations, inspections, maintenance, and crew drills of BOP systems at least weekly; record results in driller's report; retain records for 2 years following completion of drilling activity.	6
1612	Request exception to requirements for well-control drills.*	1
1613(e)	Pressure test diverter sealing element/valves weekly; actuate diverter sealing element/valves/ control system every 24 hours; test diverter line for flow every 24 hours; record test times and results in driller's report.	2
1615	Request exception to blind-shear ram or pipe rams and inside BOP to secure wells.	1
1616(c)	Retain training records for lessee and drilling contractor personnel.	Burden in subpart O (1010–0128).
1619(a)	Retain records for each well and all well operations for 2 years.	12
1619(c), (d), (e)	Submit copies of records, logs, reports, charts, etc., upon request.	1
1621	Conduct safety meetings prior to well-completion or well-workover operations; record date and time.	1
1628(b), (d)	Submit application for design and installation features of sulphur production facilities and fuel gas safety system; certify new installation conforms to approved design.	4
1628(b), (d)	Maintain information on approved design and installation features for the life of the facility.	1
1629(b)(1)(ii), (iv)	Retain pressure-recording charts used to determine operating pressure ranges for 2 years.	12
1629(b)(3)	Request approval of firefighting systems; post firefighting system diagram.	4
1630(a)(5)	Notify MMS of pre-production test and inspection of safety system and commencement of production.	
1630(b)	Maintain records for each safety device installed for 2 years.	1
1631	Conduct safety device training prior to production operations and periodically thereafter; record date and time.	1
1633(b)	Submit application for method of production measurement	2
1634(b)	Report evidence of mishandling of produced sulphur or tampering or falsifying any measurement of production.	1
1600 thru 1634	General departure and alternative compliance requests not specifically covered elsewhere in subpart P.	2

*We included a minimal burden, but it has not been necessary to request these data and/or no submissions received for many years.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * ''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: January 17, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E7–1289 Filed 1–26–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 13, 2007. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 13, 2007.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

Arkansas

Cross County

Mt. Zion Methodist Episcopal Church South Cemetery, Approx. 2.5 mi. SE. of Vanndale on Cty, Rd. 367, Vanndale, 07000055

Pulaski County

Robinson, Joseph Taylor, Memorial Auditorium, (New Deal Recovery Efforts in Arkansas MPS) 414 W. Markham, Little Rock, 07000056

Florida

Flagler County

Vocational Agriculture Building, (Florida's New Deal Resources MPS) 1001 E. Howe St., Bunnell, 07000058

Palm Beach County

Northboro Park Historic District, Bounded by 40th N., Flagler Dr., 36th St. and Broadway, West Palm Beach, 07000059

St. Johns County

Hastings Community Center, 401 N. Main St., Hastings, 07000057

Illinois

Cook County

Continental and Commercial National Bank, 208 S. LaSalle, Chicago, 07000064

Home Bank and Trust Company, 1200 N. Ashland Ave., Chicago, 07000061

Silhan, Mr. Robert, House, 3728 S. Cuyler Ave., Berwyn, 07000062

Montgomery County

Belevidere Cafe, Motel and Gas Station, (Route 66 through Illinois MPS), 817 Old Rte 66, Litchfield, 07000060

Louisiana

Beauregard Parish

Hudson River Lumber Company General Manager's House, 411 S. Washington Ave., DeRidder, 07000068

Sills House, 211 W. Fourth St., DeRidder, 07000067

Toy House, 205 W. Fourth St., DeRidder, 07000066

Calcasieu Parish

Muller's Department Store, 700 Ryan St., Lake Charles, 07000069

New York

New York County

Wall Street Historic District, Roughly bounded by Cedar St. and Maiden's Ln., Pearl St., Bridge and S. William St., and Greenwich St. and Trinity PL., New York, 07000063

North Carolina

Hertford County

Brown, Wiley and Jane Vann, House, NC 1108, 0.5 mi. N. of NC 561, Union, 07000073

Ohio

Cuyahoga County

Baker Motor Vehicle Company Building, 7100–7122 Euclid Ave., Cleveland, 07000071

Cleveland Warehouse Historic District (Boundary Increase), 1384–1410 West 10th St., Cleveland, 07000070

Superior Avenue Historic District, 1860–2553 Superior Ave., Cleveland, 07000072

Ross County

Walke, Anthony, and Susan Cardinal, House, 381 Western Ave., Chillicothe, 07000065

Pennsylvania

Clarion County

Foxburg Country Club and Golf Course, 369 Harvey Rd., Foxburg, 07000076

South Carolina

Bamberg County

Bamberg Post Office, 11955 Heritage Hwy., Bamberg, 07000074

Darlington County

Dove Dale, Address Restricted, Darlington, 07000075

Utah

Carbon County

Verde Homestead, 233 200 East, Helper, 07000079

Davis County

Mills—Hancock House, (Centerville MPS), 571 S. 400 West, Centerville, 07000077

Salt Lake County

Copperton Community Methodist Church, 410 E. Hillcrest Rd., Copperton, 07000080

Evergreen Avenue Historic District, Roughly bounded by Evergreen Ave., 2300 East, 3300 South and 2700 East, East Mill Creek, 07000081

Sandy Historic District, (Sandy City MPS), Roughly bounded by State St. 9000 South, 700 East and Pioneer Ave., Sandy, 07000084

Weber County

Dumke, John F., and Lillia, House, 1607 Kiesel Ave., Ogden, 07000078

Virginia

Loudoun County

Locust Grove, 200 Locust Grove Dr., Purcellville, 07000083

Staunton Independent City

Western State Hospital (Boundary Increase), 301 Greenville Ave., SE. Corner of VA 11 and VA 250, Staunton, (Independent City), 07000082

Requests for removals has been made for the following resources:

Utah

Carbon County

Bruno, Giacomo and Maria, House and Farmstead, 524 N. Main St., Helper, 02000506

Iron County

Hunter, Joseph S., House, 86 E. Center St., Cedar City, 82004126

Salt Lake County

Bonnyview Elementary School, (Murray City, Utah MPS), 4984 S. 300 W., Murray, 01000473

Redman Van and Storage Company Building, (Sugar House Business District MPS), 1240 East 2100 South, Salt Lake City, 03000635

Shupe-Williams Candy Company Factory, 2605 Wall Ave., Ogden, 78002716

[FR Doc. E7–1295 Filed 1–26–07; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–39]

Gerald E. Dariah, M.D.; Revocation of Registration

On October 12, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gerald E. Dariah, M.D. (Respondent) of Albany, Ga. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration, BD4754683, as a practitioner, and to deny any pending application for renewal of the registration, on the grounds that Respondent's state medical license had been revoked, and that Respondent had committed acts that rendered his registration inconsistent with the public interest. See 21 U.S.C. 824(a)(3) & (4); *id.* section 823(f).

The Show Cause Order specifically alleged that Respondent had engaged in the pre-signing of prescriptions for controlled substances which were then issued to patients by Respondent's nurse. Show Cause Order at 2. The Show Cause Order further alleged that investigators from DEA and the Georgia Board of Medical Examiners (Board) had subsequently executed a search warrant at Respondent's office and seized approximately thirty blank pre-signed prescriptions. *See id.* The Show Cause Order also alleged that Respondent's nurse told investigators that each morning, Respondent provided her with four pages of blank, pre-signed prescriptions. *See id.*

The Show Cause Order next alleged that Respondent had authorized his staff to fill in and issue numerous pre-signed prescriptions between November 23rd and December 29, 2003, when he was traveling abroad. *See id.* The Show Cause Order alleged that during this period, Respondent's staff issued prescriptions for Schedule II controlled substances to several patients. *See id.*

Finally, the Show Cause Order alleged that on September 21, 2004, the Board issued an order which summarily suspended Respondent's medical license, that the order had not been stayed, and that his license had not been reinstated. *See id.* at 3. The Show Cause order thus alleged that Respondent was ''not currently authorized to handle controlled substances in the State of Georgia.'' *Id.* The Show Cause Order also informed Respondent of his right to a hearing. *Id.*

On November 15, 2005, Respondent, through his counsel, timely requested a hearing. Respondent's counsel also moved to stay the proceedings until a pending criminal case brought against him by the State of Georgia was resolved. Respondent's counsel further noted that Respondent had been out of the country for ''the past five and a half months'' and that ''[h]e anticipate[d] returning next month.'' Letter from Respondent's Counsel to Hearing Clerk (Nov. 15, 2005). Alternatively, Respondent's counsel sought an extension of time to respond to the Show Cause Order. ALJ Dec. at 1. The case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner; the ALJ then issued a memorandum which offered the Government the opportunity to respond.

On January 9, 2006, the Government opposed Respondent's motions. Specifically, the Government noted that Respondent had failed to provide any information regarding the dates of his return to the country and the resolution of the State criminal proceeding. Gov. Resp. at 2. The Government further argued that because Respondent was unable to participate in a hearing he should be deemed to have waived his right to a hearing. *Id.* The Government urged the ALJ to deny Respondent's motions, to hold that Respondent had waived his right to a hearing, and to issue an order terminating the proceeding. *Id.* at 3.

On January 18, 2006, the ALJ denied Respondent's motions. The ALJ specifically noted that the motion had been filed more than two months earlier and that Respondent had subsequently failed to provide any information regarding ''the duration of his stay abroad'' and ''when the criminal matters will be resolved.'' ALJ Memorandum and Ruling 1 (Jan. 18, 2006). The ALJ thus denied both of Respondent's motions and issued an Order for Prehearing Statements. *Id.* at 2.

Thereafter, on February 8, 2006, the Government moved for summary disposition. The basis of the Government's motion was that Respondent's state medical license had been summarily suspended by the Georgia Board, the suspension had not been lifted, and it was undisputed that Respondent was not authorized to handle controlled substances in Georgia, the State in which he holds his DEA registration. Gov. Mot. for Summary Disposition at 2. The Government attached to its motion a copy of the Georgia Board's Order of Summary Suspension. Upon receipt of the Government's motion, the ALJ offered Respondent the opportunity to respond.

On March 15, 2006, Respondent filed a response. Respondent acknowledged that his state license had been

suspended but asserted that the state superior court had ruled that his alleged offenses were misdemeanors and not felonies and that he was currently in negotiations with the Board for the reinstatement of his license. Respondent's Response at 1. Respondent further contended that notwithstanding the suspension of his medical license, ''Georgia law allows unlicensed individuals to work as subordinates and laborers in the manufacturing, distributing, and dispensing of controlled substances.'' *Id.* at 3. Respondent further asserted that he was ''still eligible to apply for employment in the state as a physician's assistant, pharmacy technician, drug manufacturing employee or drug representative, among other occupations involving the handling of controlled substances.'' *Id.* Respondent maintained that ''[t]he fact that [21 U.S.C. 824(a)(3)] requires both action on the Respondent's license and an inability to engage in the manufacture, distribution, and dispensing of drugs would seem to indicate that suspension of one's license does not necessarily render the individual unable to handle controlled substances.'' *Id.* Respondent thus contended that there was an issue of fact presented and an evidentiary hearing was required. *Id.*

On April 17, 2006, the ALJ issued her opinion and recommended decision. The ALJ rejected Respondent's argument explaining that ''[i]mplicit in'' DEA's long-standing interpretation of the Controlled Substances Act ''is the assumption that the authority at issue is that inuring to the registrant as a practitioner, not whatever authority the state grants to individuals who do not hold a license to practice medicine.'' ALJ Dec. at 3. The ALJ further explained that ''[t]o hold otherwise would permit unlicensed physicians to maintain DEA registrations, contrary to the plain purpose of the CSA.'' *Id.*

The ALJ also found that it was undisputed that Respondent's state license was suspended and that he was without authority to handle controlled substances as a practitioner. *Id.* Because there was no factual issue in dispute, the ALJ granted the Government's motion for summary disposition and recommended that Respondent's DEA registration be revoked. *Id.* at 4.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's opinion and recommended decision.

Respondent's contention that he is entitled to maintain his DEA registration notwithstanding that he lacks authority under Georgia law to practice medicine is easily dismissed. Even assuming that Georgia law allows Respondent to engage in some activities involving controlled substances, the CSA makes plain that one must be currently authorized by the State to engage in the specific activities for which he holds a DEA registration.[1]

The CSA's definition of the ''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance *in the course of professional practice*.'' 21 U.S.C. 802(21) (emphasis added). Relatedly, the CSA directs that ''[t]he Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' *Id.* section 823(f). See also *id.* section 802(10) (''the term 'dispense' means to deliver a controlled substance to an ultimate user * * * pursuant *to the lawful order of a practitioner*'') (emphasis added).

As the CSA's definition of the term ''practitioner'' makes plain, a physician must be currently authorized to dispense a controlled substance ''in the course of professional practice.'' *Id.* section 802(21). A physician whose state license has been suspended or revoked does not have authority under state law to engage in the ''professional practice'' of medicine and cannot lawfully issue an order to dispense a controlled substance. Accordingly, section 304 of the CSA authorizes the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended or revoked * * * and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* § section824(a)(3).[2]

DEA has consistently held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. See Sheran Arden Yeates, 71 FR 39130, 39131 (2006); Dominick A. Ricci, 58 FR 51104, 51105 (1993); Bobby Watts, 53 FR 11919, 11920 (1988).

I therefore conclude that Respondent's argument is without merit. Because Respondent has produced no evidence that the Georgia's Board's summary suspension order has been set aside or stayed, I conclude that Respondent lacks authority under Georgia law to handle controlled substances as a practitioner and is not entitled to maintain his DEA registration.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BD4754683, issued to Gerald E. Dariah, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective February 28, 2007.

Dated: January 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1320 Filed 1–26–07; 8:45 am]

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[1] Contrary to the understanding of Respondent's counsel, the word ''handle'' as used in DEA cases interpreting the CSA is a term of art. It refers to a registrant's authority to perform the specific activities for which registration is required.

[2] Even if it is true, Respondent's ''contention that he is still authorized by state law to engage in the manufacturing [and] distribution * * * of controlled substances,'' Respondent Resp. at 3, is irrelevant. Respondent was registered under the CSA as a practitioner and not as a manufacturer or distributor. The Act specifically defines ''the term 'distribute''' to exclude ''dispensing.'' 21 U.S.C. § 802(11). The only activity which is relevant in assessing whether Respondent can maintain his practitioner's registration is dispensing. *See id.* § 823(f); see also 21 CFR 1301.13(e) (table) (distributing and dispensing are independent activities and require separate registrations).

Finally, even if ''Georgia law allows unlicensed individuals to work as subordinates * * * in the * * * dispensing of controlled substances,'' Resp. Resp. at 3, Respondent does not maintain that he can lawfully issue a prescription for a controlled substance under state law, which is what matters for purposes of the CSA.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen J. Heldman, Denial Of Application

On November 18, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Stephen J. Heldman of Cincinnati, Ohio (Respondent). The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine on the ground that his registration would be inconsistent with the public interest. See 21 U.S.C. 823(h) & 824(a).

The Show Cause Order specifically alleged that Respondent was proposing to distribute products containing pseudoephedrine and ephedrine, which are precursor chemicals used to manufacture methamphetamine, to non-traditional retailers of these products such as convenience stores and gas stations. See Show Cause Order at 1–2.

The Show Cause Order alleged that these retailers are sources for the diversion of these products into the illicit manufacture of methamphetamine. See id.

The Show Cause Order next alleged that during a pre-registration investigation, Respondent indicated that he had no prior experience in handling List I chemical products, that he was unaware of the problem of diversion of these products into the illicit manufacture of methamphetamine, and that he was proposing to store listed chemical products in a commercial self-storage locker which had inadequate security. See id. The Show Cause Order also alleged that while Respondent told investigators that he intended to distribute only traditional products containing pseudoephedrine, the primary business of one of his two proposed suppliers is the distribution of combination ephedrine products which are sold by gray market retailers. See id.

The Show Cause Order further alleged that during customer verifications, DEA investigators determined that several of Respondent's proposed customers obtained List I chemical products from other suppliers and had no intention of purchasing these products from him. See id. at 3. Finally, the Show Cause Order alleged that during an August 2005 investigation of another DEA registrant, DEA investigators determined that Respondent had obtained List I chemicals without being registered to do so. See id.

On November 25, 2005, the Government initially attempted to serve the Show Cause Order by Certified Mail, Return Receipt Requested, by sending it to the address Respondent gave on the application for his proposed registered location. The mailing, however, was returned unclaimed. Thereafter, on January 17, 2006, the Government served the Show Cause Order by First Class Mail. Since that date, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since the service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. See 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material found in the investigative file and make the following findings.

Findings

Pseudoephedrine and ephedrine are List I chemicals that, while having therapeutic uses, are easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. 802(34); 21 CFR 1308.12(d). As noted in numerous DEA orders, ''methamphetamine is an extremely potent central nervous system stimulant.'' Sujak Distributors, 71 FR 50102, 50103 (2006); A–1 Distribution Wholesale, 70 FR 28573 (2005). Methamphetamine is highly addictive; its abuse has destroyed lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals used to make the drug, its manufacture creates serious environmental harms. David M. Starr, 71 FR 39367 (2006).

On October 27, 2003, Respondent, a sole proprietor, applied for a registration as a distributor of List I chemicals at the address of his residence in Cincinnati, Ohio. According to the investigative file, on January 15, 2004, a DEA Diversion Investigator (DI) contacted Respondent requesting additional information. The DI also contacted Respondent on additional occasions to request information. On October 11, 2004, Respondent sent a letter to the DI providing the requested information. In this letter, Respondent informed the DIs that the List I chemical products would actually be kept in a storage unit at a commercial storage facility.

On December 16, 2004, the DIs conducted an on-site inspection of the facility. Respondent's proposed use of the facility raised substantial concerns. According to the investigative file, the entrance gate to the facility remained open long enough to allow unauthorized persons to obtain access to the facility. Moreover, while Respondent's storage unit had an alarm system, the alarm sounded only at the facility's office and not at the local police station. Furthermore, during the visit, the facility's office was unoccupied. Finally, the DIs noted that it was unclear who would be responsible for handling the products that were delivered to the storage facility.

During the course of the investigation, the DIs determined that Respondent engages in the business of distributing assorted products to convenience stores, gas stations, truck stops and liquor stores. Respondent told the DIs that he had no experience in the distribution of List I chemical products and that he had no knowledge of the diversion of these products into the illicit manufacture of methamphetamine.

Respondent provided the DIs with a list of proposed customers for List I products. A substantial number of the proposed customers were Ameristop Food Marts, a chain of company-owned and franchise-owned convenience stores in Ohio and adjacent states. One of the DIs contacted the buyer for Ameristop Corporation, who informed him that all company-owned stores and most of the franchise-owned stores were supplied by Liberty Distribution, a subsidiary of Ameristop Corp. The buyer acknowledged that Respondent had supplied some items to ten Ameristop stores but stated that Ameristop would discourage its stores from buying List I chemical products from Respondent or any other independent vendor.

Subsequently, on August 23, 2005, DEA DIs executed an Administrative Inspection Warrant at R J General Corporation, a Cincinnati-based firm which was soon to become—as in that day—an ex-DEA registered distributor of List I chemical products. During the inspection, the DIs interviewed Mr. John Meinerding, who admitted that R J General had sold List I chemical products to Respondent on various dates between January 7, 2004, and December 8, 2004. Of note, on October 11, 2004, Respondent had faxed a letter to DEA in which he stated that his firm was a ''wholesale distributor.'' Moreover, in response to a question regarding whether he would engage in retail sales of List I chemical products, Respondent answered: ''No.''

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute List I chemicals is entitled to be registered unless the registration would be ''inconsistent with the public interest.'' In making this determination, Congress directed that I consider the following factors:

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id.

''These factors are considered in the disjunctive.'' Joy's Ideas, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for registration should be denied. See, *e.g.*, Starr, 71 FR at 39367; Energy Outlet, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie*

v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case I conclude that Factors One, Two, Four, and Five establish that granting Respondent's application would be inconsistent with the public interest.

Factor One—Maintenance of Effective Controls Against Diversion

The investigative file establishes that Respondent does not have effective controls against diversion. In this case, it is unclear who would have access to List I chemical products upon their delivery to the storage facility and whether they would be handled in a manner which would prevent theft. See 21 CFR 1309.71(b). Furthermore, Respondent's proposed use of a commercial storage facility raises substantial questions about the adequacy of his security controls. Among other things, it appears that unauthorized persons can easily gain access to the facility. Moreover, Respondent has no control over the selection of the facility's other tenants or the persons they bring onto the property. See Sujak Distributors, 71 FR 50102, 50104 (2006). As I have previously explained, the use of commercial storage facilities presents an unacceptable risk that a criminal may gain access to the property and steal List I chemical products.

Finally, while the facility has an alarm system, the alarm sounds only at the facility's office. This raises the further question of whether the facility provides effective monitoring twenty-four hours a day. I thus conclude that Respondent does not maintain effective controls against diversion and that this factor alone is dispositive in concluding that granting him a registration would be inconsistent with the public interest.

Factor Two—The Applicant's Compliance With Applicable Laws

The investigative file contains disturbing evidence that Respondent repeatedly purchased List I chemicals products from R J General Corp., between January 7, 2004, and December 8, 2004. Moreover, in a letter which Respondent faxed to the DIs, he expressly stated that he did not engage in the retail sale of List I chemical products.

Federal regulations clearly state that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is approved and a Certificate of Registration is issued by the Administrator to such person.'' 21 CFR 1309.31(a). Respondent did not have a registration, and the regulations no longer exempt an applicant from the requirement of obtaining a registration prior to distributing List I chemical products. *Id.* 1309.25.

Based on the evidence in the file, I conclude that Respondent violated federal law by distributing List I chemicals without the required registration. See 21 U.S.C. 822(a)(1). As I have previously noted, ''[r]egistration in one of the essential features of the Controlled Substances Act.'' Sato Pharmaceutical, Inc., 71 FR 52165, 52166 (2006). Respondent's engaging in the distribution of List I chemicals without first obtaining a registration is a serious violation of the Act. I therefore conclude that this factor also provides sufficient reason by itself to deny Respondent's application.[1]

Factor Three—The Applicant's Experience in Distributing List I Chemicals

Beyond the misconduct discussed above, Respondent stated in his letter to the DIs that he had no experience in the sale of List I chemical products. Were there no evidence of Respondent having engaged in illicit activity, I would nonetheless conclude that his lack of experience bars his registration.

Because the regulatory scheme imposed by federal law is complex and the risk of diversion is substantial, this is not a line of business that is suitable for a new entrant to learn through on-the-job training. Accordingly, numerous DEA final orders have made clear that an applicant's lack of experience in distributing List I chemicals is a factor which weighs heavily against granting an application for a registration. Tri-County Bait Distributors, 71 FR 52160, 52163 (2006); Jay Enterprises, 70 FR 24620, 24621 (2005); ANM Wholesale, 69 FR 11652, 11653 (2004). I therefore conclude that this factor further supports the denial of Respondent's application.

Factor Four—Other Factors That Are Relevant to and Consistent With Public Health and Safety

Numerous DEA orders recognize that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing pseudoephedrine and ephedrine. See, *e.g.*, Tri-County Bait Distributors, 71 FR at 52161; D & S Sales, 71 FR 37607, 37609 (2006); Branex, Inc., 69 FR 8682, 8690–92 (2004). DEA orders also establish that the sale of certain List I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. See, *e.g.*, Joey Enterprises, 70 FR 76866, 76867 (2005). As Joey Enterprises explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' Id. See also TNT Distributors, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); OTC Distribution Co., 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); MDI Pharmaceuticals, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

Significantly, all of Respondent's proposed customers participate in the non-traditional market for ephedrine and pseudoephedrine products. Moreover, many of Respondent's proposed customers have other suppliers. Finally, Respondent's lack of knowledge regarding the diversion of List I chemicals into the illicit manufacture of methamphetamine is also disconcerting.

DEA orders recognize that there is a substantial risk of diversion of List I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. See, *e.g.*, Joy's Ideas, 70 FR at 33199 (finding that the risk of diversion was ''real, substantial and compelling''); Jay Enterprises, 70 FR at 24621 (noting ''heightened risk of diversion'' should application be granted). Under DEA precedents, an applicant's proposal to sell into the non-traditional market weighs heavily against the granting of a registration under factor five. So too here.

[1] Because of the seriousness of this misconduct, I conclude that even though there is no evidence that Respondent has ever been convicted of an offense related to listed chemicals, this factor is entitled to no weight.

Because of the methamphetamine epidemic's devastating impact on communities and families throughout the country, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and analysis of one of the other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in Xtreme Enterprises, 67 FR 76195, 76197 (2002), my predecessor denied an application observing that the respondent's ''lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling List I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market.'' More recently, I denied an application observing that the respondent's ''lack of a criminal record and any intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market.'' Jay Enterprises, 70 FR at 24621. Accord Prachi Enterprises, 69 FR 69407, 69409 (2004).

The investigative file in this case supports even more adverse findings than those which DEA has repeatedly held are sufficient to conclude that granting an application would be inconsistent with the public interest. Here, Respondent clearly lacks effective controls against diversion, has no experience in the elicit wholesale distribution of List I chemical products, and yet intends to distribute these products to non-traditional retailers, a market in which the risk of diversion is substantial. Furthermore, the file establishes that Respondent violated federal law by distributing List I chemicals without a registration. Given these findings, it is indisputable that granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) & 0.104, I order that the application of Respondent Stephen J. Heldman, for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is, denied. This order is effective February 28, 2007.

Dated: January 20, 2007.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–36]

Rose Mary Jacinta Lewis, M.D.; Affirmance of Immediate Suspension

On March 22, 2004, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Notice of Immediate Suspension of the practitioner's Certificate of Registration, AL8962993, held by Rose Mary Jacinta Lewis, M.D. (Respondent), of Richmond, CA. The Notice of Immediate Suspension was based on my preliminary finding that substantial amounts of Schedule III controlled substances that had been ordered using Respondent's DEA registration could not be accounted for. Show Cause Order at 7. Based on the significant risk that these drugs had been diverted as well as evidence showing that Respondent had allowed unregistered entities and individuals to use her registration to obtain controlled substances, I concluded that Respondent's continued registration ''would constitute an imminent danger to the public health and safety.'' *Id.*

More specifically, the Show Cause Order alleged that in September 2003, R & S Sales, a registered distributor, had reported to DEA ''that excessive amounts of controlled substances were being ordered under'' Respondent's name and registration number. *Id.* at 2. The Show Cause Order further alleged that shortly thereafter, DEA investigators went to Respondent's registered location and determined that Respondent was no longer practicing medicine at the location and had retired from practice and vacated the premises six months earlier. *See id.* During the attempted visit, DEA investigators found several United Parcel Service (UPS) delivery notices including one from R & S. *See id.* According to the Show Cause Order, DEA investigators subsequently determined that on September 10, 2003, an order for 300 bottles, each containing 500 count hydrocodone/apap [1] (7.5/75), a Schedule III controlled substance, had been placed with R & S under Respondent's registration and that UPS had been unable to deliver the order to Respondent's former office. *See id.* The Show Cause Order further alleged that the order was subsequently delivered to an entity known as International Surplus Medical Products, Inc. (ISMP), at its Richmond, California office. *See id.* The address was not, however, a registered location. *See id.*

The Show Cause Order next alleged that on November 24, 2003, Respondent left a voicemail message with a DEA investigator in which she stated that she was ISMP's medical director and was using her medical license to order supplies. *See id.* According to the Show Cause Order, a DEA investigator then called Respondent and advised her that R & S could not ship supplies to ISMP's office because it was not a registered location. *Id.* at 3. The Show Cause Order alleged that during the conversation, Respondent stated that she was working for a non-profit project that provided medical supplies for AIDS patients in Nigeria, that the project ordered only AIDS-related drugs such as AZT, and that it was not ordering controlled substances. *See id.*

The Show Cause Order further alleged that following the conversation, Respondent submitted a written request to change the address of her registered location to ISMP's Richmond office. *Id.* The Show Cause Order alleged that in her letter requesting the change, Respondent stated that she worked with ISMP, a non-profit entity that ''sends AIDS drugs to Nigeria.'' *Id.* On December 1, 2003, DEA personnel changed the address of Respondent's registered location to ISMP's office. *Id.*

The Show Cause Order next alleged that during the week of December 3, 2003, R & S notified DEA that on November 26, 2003, an order for 504 bottles, each containing 500 tablets of hydrocodone/apap, had been placed using Respondent's registration. *See id.* The Show Cause Order alleged that R & S was told to ship the order to Respondent's former office, and that on December 1, 2003, 19 packages were received at that address and an additional package was sent to ISMP's office. *Id.*

The Show Cause Order alleged that on December 10, 2003, DEA investigators attempted to serve an Administrative Inspection Warrant at ISMP's office but no one was present. *See id.* The Show Cause Order next alleged that on January 15, 2004, DEA investigators interviewed Respondent at her home. *Id.* During the interview Respondent allegedly told investigators that she had retired from medical practice and was working as ISMP's medical director. *Id.*

The Show Cause Order further alleged that Respondent told the investigators that she had provided her DEA number to Mr. Chuka Ogele, ISMP's Chief Executive Officer, so that he could order medical supplies and controlled substances which were to be exported to Nigeria, and that she denied personally

[1] Apap is an abbreviation for acetaminophen.

placing any orders for controlled substances. *Id.* at 4. The Show Cause Order alleged that during the interview, Respondent stated that she did not know how what drugs and quantities Ogele had ordered from R & S and also had none of the records that she was required to maintain under federal law. *Id.* According to the Show Cause Order, Respondent also told the investigators that she did not have a key to the ISMP office, notwithstanding that it was her new registered location. *Id.*

The Show Cause Order alleged that DEA investigators then contacted Ogele, who stated that he did not keep the records at ISMP's office but rather at his home. *Id.* According to the allegations, the investigators subsequently interviewed Ogele, who told them that controlled substances were ordered based on requests he received from Nigeria, and that he either personally carried the drugs to Nigeria or arranged for unidentified Nigerian ''diplomats'' to pick up the drugs in San Francisco and take them to Nigeria. *Id.*

The Show Cause Order further alleged that the investigators inventoried the controlled substances at the ISMP office. *Id.* The Show Cause Order alleged that the office had neither a substantially constructed cabinet nor an alarm system. *Id.* at 4–5.

The Show Cause Order next alleged that on January 22, 2004, an employee of the physician who had purchased Respondent's former office informed the investigators that several months earlier, a shipment of controlled substances had been received by a workman who was renovating the office and had been stored there. *See id.* at 5. The shipment was turned over to the investigators, who determined based on a packing slip, that five boxes were shipped by R & S on August 14, 2003, that each box held 36 bottles (each containing 500 tables of hydrocodone/apap), and that the order had been placed by Ogele. *See id.* The Show Cause Order further alleged that the other four boxes have not been accounted for. *See id.*

The Show Court Order also alleged that on January 26, 2004, DEA investigators went to ISMP's office to serve an administrative inspection warrant. *Id.* According to the Order, the investigators seized thirty thousand dosage units of hydrocodone/apap (in sixty 500-count bottles) and 211,000 dosage units of codeine/apap (in 500 and 1,000 count bottles). *Id.* at 6.

Finally, the Show Cause Order alleged that Respondent did not maintain any of the records documenting the receipt and disposition of the controlled substances that were ordered under her registration. *Id.* at 6–7. The Order further alleged that the disposition of ''the bulk of the controlled substances ordered under [Respondent's] name and registration from March 2003'' through the issuance of the Order of Immediate Suspension were unknown. *Id.* at 7.

On April 5, 2004, DEA Investigators personally served Respondent with the Order to Show Cause and Immediate Suspension. ALJ Ex. 2, at 1. Thereafter, on May 3, 2004, Respondent through her counsel, timely requested a hearing. *See id.* Respondent also responded to the Show Cause Order's allegations.

The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in San Francisco, CA, on August 2 and 3, 2005. At the hearing, both parties called witnesses and introduced documentary evidence. Following the hearing, both parties submitted proposed findings of fact and conclusions of law.

On September 26, 2006, the ALJ issued her decision. ALJ at 1. The ALJ concluded that the Government had proved by a preponderance of the evidence that the continuation of Respondent's registration would be inconsistent with the public interest. The ALJ also concluded that ''Respondent's lack of responsible handling of the authority granted to her through her DEA registration poses a threat to the public health and safety,'' and recommended that I revoke her Certificate of Registration. *Id.* at 38. Neither party filed exceptions.

Having carefully reviewed the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. I further affirm the immediate suspension of Respondent's registration and make the following findings.

Findings Of Fact

Respondent has held a California Physician and Surgeon's license since July 1, 1975, which remains in active status. Respondent practiced medicine as a plastic surgeon from 1980 until March 2003. During March 2003, Respondent closed her practice and sold her office condominium to Dr. Randy Weil. Her state license has never been subjected to disciplinary action. ALJ at 3–4.

Respondent held DEA Certificate of Registration, AL8962993, which was issued on December 1, 2003, and expired on March 31, 2006. Gov. Ex. 1. According to DEA records, Respondent has not submitted a renewal application.[2] I thus find that Respondent is not currently registered. Respondent testified, however, that ''[j]ust because [she] closed [her] practice didn't mean [she] was never going to work again.'' Tr. 353.

With respect to the events which are the subject of this proceeding, Respondent's registered location was initially 203 Willow St., Suite 303, San Francisco, CA. On December 1, 2003, Respondent's registered location was changed to 120 Broadway St. Suite 3, Richmond, CA. Gov. Ex. 2.

On November 5, 1996, Chuka Ogele founded International Surplus Medical Products, Inc. (ISMP), which was organized for charitable purposes under section 501(c)(3), of the Internal Revenue Code. Resp. Ex. 10, at 2. According to its articles of incorporation, ISMP's purpose was ''to distribute medical supplies in developing nations.'' *Id.* Ogele appointed himself Chairman and Managing Director. Resp. Ex. 12.

Sometime in either 2001 or 2002, Respondent was introduced to Ogele by Sherrone Smith, an ISMP board member who had taught Ogele at the College of Alameda. Tr. at 66–67, 262. Respondent met with Ogele, who told her that ISMP had been in existence for six or seven years and that the entity provided vitamins to developing countries. *Id.* at 262–63. Ogele told Respondent that he wanted to provide medications to treat HIV/AIDS. *Id.* at 263. Ogele offered Respondent a position on ISMP's board gave her the title of Associate Medical Director. *Id.* 263.

Respondent subsequently gave Ogele a copy of her state medical license and her DEA registration. *Id.* 327. Respondent maintained that she did so to enable Ogele to order supplies, that ''[a]ll the suppliers require that you give them both licenses,'' and that she had ''never had one, even if [she was not] ordering * * * controlled substances, [that] didn't request both licenses.'' *Id.* Respondent further testified that she provided her DEA registration to Ogele without checking out his background. *Id.* at 329.

The DEA Investigation

Respondent first came to the attention of DEA in September 2003, when R &

[2] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the fact of which I am taking official notice, publication of this final order shall be withheld for fifteen days, which shall begin on the date of service by placing this order in the mail.

S Sales notified the DEA Louisville office of Respondent's excessive purchases of controlled substances including hydrocodone, acetaminophen with codeine, and promethazine with codeine. ALJ at 4 (citing Tr. 12–13). The information was forwarded to a Diversion Investigator (DI) with the San Francisco Diversion Group.

The DI went to Respondent's registered location at 203 Willow Street, San Francisco only to find that her office was vacant. Tr. 14–15. The DI inquired with the building's management company as to Respondent's whereabouts; the DI was told that, in March 2003, she had retired and vacated her office. *Id.* 15.

The DI subsequently contacted R & S Sales. R & S advised the DI that, on September 10, 2003, an additional purchase of a controlled substance had been made with Respondent's registration. Tr. 15–16. The purchase was for 300 bottles, each containing 500 tablets of hydrocodone/apap. Gov. Ex. 17. The invoice lists the name ''CHUKA'' under the Purchase Order Number. *Id.* It also indicates that ISMP was to be billed for the order and that the drugs were to be shipped to Respondent at the Willow St. office which she had since vacated. *Id.*

The DI contacted UPS to ascertain whether the shipment had been delivered. Tr. at 16. UPS informed the DI that it had attempted two deliveries at Respondent's former office and that someone had changed the address of the delivery to ISMP's office at 120 Broadway in Richmond. *Id.* UPS subsequently delivered the drugs to Chuka Ogele at this address. *Id.*

On November 26, 2003, the DI received a voicemail message from Respondent. In this message, Respondent stated that Chuka Ogele, ISMP's chairman, had been attempting to call the DI regarding the ordering of supplies. *Id.* at 17. In the message, Respondent also stated that she was ISMP's medical director and that ISMP ''was using her medical license to order medical supplies.'' *Id.* Respondent requested that the DI call her. *Id.* at 18.

The DI phoned Respondent. Respondent told the DI that R & S would not deliver medical products to ISMP's office because it was not registered under her name and address. *Id.* The DI told Respondent that she needed to change the address of her registration. *Id.* According to the DI, Respondent said during the call that ''she was not ordering controlled substances, but was ordering * * * AIDS drugs such as AZT.'' *Id.*

Subsequently, Respondent submitted a letter requesting a change of the address of her registered location. *Id.* On December 1, 2003, DEA changed the address of her registered location to ISMP's office. *Id.* at 19.

Shortly thereafter, the DI received another phone call from R & S. *Id.* During this call, the DI was informed that on November 26, 2003, another order for controlled substances had been placed using Respondent's registration and her former office as the address that the drugs were to be shipped to. *Id.*; see also Gov. Ex. 16, at 2. This order was for 504 bottles each containing 500 count of hydrocodone/apap 7.5/750mg.[3]

Following the receipt of this information, the DI obtained an administrative inspection warrant for the ISMP's office. Tr. 19. On December 10, 2003, the DI, along with other DEA investigators, attempted to serve the warrant. *Id.* Upon their arrival at ISMP's office, the DIs could not serve the warrant because no one was present. *Id.* at 20.

On January 15, 2004, the DI, accompanied by another DI and a Special Agent, went to Respondent's residence to interview her regarding the large quantities of controlled substances that were being ordered using her registration. *Id.* at 20–21. During the interview, Respondent told the investigators that she was the medical director of ISMP, that the organization assisted AIDS patients in Nigeria, and that Chuka Ogele was the chairman. *Id.* at 21.

Respondent further told the DIs that Ogele was using her DEA number to order medical supplies from R & S Sales and that she had not personally placed any of the orders. *Id.* at 23. Respondent told the DI that ''she did not know what types of controlled substances [were] being ordered by Ogele,'' *id.,* but indicated that the drugs were being ordered for AIDS patients. *Id.* at 24. Respondent did not have any records documenting the purchases of the controlled substances but thought that the records might be at ISMP's office. *Id.* Respondent did not, however, have access to the office as Ogele ''had the only key.'' *Id.*

During the interview, the other DI told Respondent that she was liable for giving her registration to another person and not knowing what drugs were being ordered. *Id.* at 25. Respondent stated that she understood. *Id.* The investigators also told Respondent that they needed to see the records. *Id.* Respondent contacted Ogele, who agreed to meet with the investigators later that day at ISMP's office. *Id.* at 25–26.

The investigators subsequently met with Ogele at ISMP's office. *Id.* at 26. During the meeting, Ogele told the investigators that he was ISMP's chairman and that the controlled substances he was ordering from R & S were for Nigerian AIDS patients. *Id.* at 27–28. Ogele provided the investigators with several documents from officials of the Government of Benue State, Nigeria. *Id.* at 30; see also Gov. Ex. 6 & 7. While these documents show that Benue State Ministry of Health requested that ISMP supply it with various drugs for treating HIV and other opportunistic infections, Benue State officials did not request that ISMP supply any controlled substances. See Gov. Exs. 6 & 7.

As for the controlled substance records, Ogele provided the investigators with four invoices for the purchase of controlled substances. Tr. 30. Subsequently, a DI determined that about thirteen orders for controlled substances had, in fact, been placed with R & S using Respondent's registration. *Id.* at 29.

Moreover, Ogele did not provide any records documenting the distribution of the controlled substances. *Id.* at 27. During the interview, Ogele stated that he would sometimes take controlled substances to Nigeria in his luggage. *Id.* at 31. Ogele also stated that sometimes Nigerian diplomats would come to San Francisco to obtain the controlled substances and take them back to Nigeria. *Id.* Ogele did not hold any DEA registration and Respondent was not registered as an exporter. *Id.* at 31–32. The investigators told Ogele that he did not have the registration required under federal law to export controlled substances. *Id.* at 31. The investigators also determined that there were controlled substances on the premises and took an inventory. *Id.* at 32.

On January 22, 2004, an employee of Dr. Randall Weil (who had purchased Respondent's former office) contacted DEA. *Id.* at 32–33. Dr. Weil's employee informed DEA that the office had received a shipment of controlled substances that had been shipped to Respondent. *Id.* at 33. The next day, the DI and her supervisor went to Dr. Weil's office and retrieved one box holding 36 bottles, each containing 500 tablets, of hydrocodone/apap 7.5/750. *Id.* at 34. The shipment's packing slip, which was dated August 14, 2003, indicated that a total of 180 bottles (five boxes) of the drug had been ordered. Resp. Ex 3, at 2. The investigators have not been able to determine the disposition of the other 144 bottles. Tr. 34.

[3] The order also included one bottle of 100 ativan (2 mg.) tablets. Gov. Ex. 16, at 2.

On January 26, 2004, the DI obtained and served another administrative inspection warrant at ISMP's office. *Id.* at 34–35. DEA personnel went to ISMP's office but found no one present. *Id.* at 37. The investigators then contacted Ogele by phone. *Id.* Following Ogele's arrival, the investigators informed Ogele that he was improperly using Respondent's registration. *Id.* at 39. The investigators then seized approximately 300 bottles of hydrocodone/apap and codeine/apap, which were taken to the DEA office. *Id.* at 39–40; Gov. Ex. 8. The investigators subsequently contacted Respondent and offered to arrange for the drugs to be returned to R & S with a credit to her account. *Id.* at 40.

Respondent agreed and, on January 30, 2004, went to the DEA office to assist in the inventory. *Id.* at 40–41. The inventory differed, however, from the inventory that was taken during the January 26 administrative inspection by one bottle of hydrocodone/apap. *Id.* at 171.

During this meeting, the DI told Respondent that DEA was concerned about the large orders of controlled substances that were placed with her registration. *Id.* at 41. The DI also told Respondent that it was improper to allow Ogele to use her DEA registration to order controlled substances for export to Nigeria.[4] *Id.* The DI also discussed with Respondent the shipment that DEA had retrieved from her former office. *Id.* at 42. Respondent told the DIs that she had not ordered those drugs. *Id.*

The DI advised Respondent that DEA was seeking to suspend her registration. *Id.* at 45–46. The DI asked Respondent whether she would voluntarily surrender her registration. *Id.* Respondent refused. *Id.* at 46.

The investigators subsequently obtained from R & S Sales, copies of the invoices documenting the controlled substance purchases made using Respondent's registration between August 15, 2002, and December 29, 2003. Tr. 52, Gov. Exs. 12 & 17. The Government also introduced into evidence a compilation of the purchases. See Gov. Ex.13.

The compilation shows that Ogele used Respondent's registration to obtain from R & S, 1,537,500 tablets of hydrocodone/apap in various strengths and 450,000 dosage units of codeine/apap in various strengths; these drugs are schedule III controlled substances. See 21 CFR 1308.13(e). The compilation further shows that Respondent's registration was used to purchase from R & S, 97,340 dosage units of lorazepam (in various strengths), 19,900 dosage units of phenobarbital (in various strengths), 9700 dosage units of ativan (2mg.), 400 tablets of diazepam, and 3100 tablets of flurazepam. All of these drugs are schedule IV controlled substances. *Id.* 1308.14(c). Finally, the compilation shows that Respondent's registration was used to order 13,800 tablets of diphenoxylate/atropine sulfate, and 455,040 milliliters of promethazine/codeine cough syrup; both drugs are schedule V controlled substances. *Id.* 1308.15

The investigation also determined that Ogele used Respondent's registration to order controlled substances from an additional supplier, Priority Healthcare, between July 16, 2003, and September 15, 2004.[5] See Gov. Ex. 10. The compilation of these purchases shows that Ogele obtained 285,900 dosage units of codeine (30mg.)/apap and 135,900 dosage units of codeine (60 mg.)/apap. See Gov. Ex. 11, ALJ at 3. The compilation also shows that Ogele obtained 77,100 dosage units of hydrocodone/apap (of various strengths). *Id.* Finally, the compilation shows that Ogele obtained 46,694 sixteen oz. bottles of promethazine w/codeine, the wholesale price of this medication was approximately $664,900.

Ogele purchased the majority of the drugs from Priority after the service of the Notice of Immediate Suspension. See Gov. Exs. 10 & 11. Respondent did not become aware of the purchases from Priority until a few months before the hearing when Ogele's wife apparently found an invoice or some other document from Priority and told Respondent. Tr. 347. Respondent did not provide DEA with any records related to the receipt and distribution of these drugs. *Id.* 54–55.

DEA has been unable to determine the disposition of the great majority of the drugs Ogele ordered using Respondent's registration. See ALJ at 15; Tr. at 53, 55, 64. The only drugs which can be accounted for are those which DEA retrieved from Respondent's former office and those seized during the execution of the warrant at ISMP's office. Tr. 53.

On September 2, 2004, Ogele was arrested by local authorities at the George Bush Intercontinental Airport in Houston, Texas. *Id.* at 55. At the time, Ogele was carrying $975,481 in cash and 395 Vicodin tablets for which he lacked a prescription. *Id.*; see also Gov. Ex. 22. During an interview with Houston police, Ogele claimed that the cash had been donated to ISMP. Tr. 56. Ogele further stated that a person named Mike, who lived in Houston, would sometimes hold fundraisers at churches for ISMP. *Id.* at 56–57. Ogele did not, however, know Mike's last name or his address. *Id.* Initially, Ogele told the police that he did not know how to contact Mike. *Id.* at 57. Ogele later changed his story and stated that Mike had called him upon his arrival at his hotel and brought the cash to him. *Id.* Subsequently, Ogele waived his interest in the cash and forfeited it. Gov. Ex. 22. He was also charged with unlawful possession of controlled substances. Tr. 58.

On September 22, 2004, Ogele was arrested at another Houston airport (William P. Hobby). Gov. Ex. 19. On this occasion, Ogele was carrying $7774 in cash and various controlled substances including 24 Vicodin tablets, 135 Ativan tablets, and two Lortab tablets. *Id.* at 2. He did not have a valid prescription for any of these drugs. Tr. 58. He also had in his possession thirteen invoices from Priority Healthcare. *Id.* at 58–59. The cash was again seized and forfeited. *Id.* at 58. Ogele was subsequently convicted of delivery of a controlled substance, a felony offense under Texas law, and sentenced to eight years of community supervision. Gov. Ex. 20.

Respondent's Knowledge of Ogele's Use of Her DEA Registration

One of the central issues in this case is whether Respondent knew that Ogele was using her DEA registration to order controlled substances. Both in her testimony and her post-hearing brief, Respondent has maintained that prior to the January 15, 2004 interview with DEA, she ''did not know about the ordering of [the] controlled substances and is not responsible for record keeping involved with such orders.'' Resp. Br. at 20. *See also id.* at 6 (Respondent ''did no[t] anticipate that there would be any controlled substances ordered to be used in the project.'').

In reference to Respondent's giving her DEA registration to Ogele, the ALJ found that ''Respondent credibly

[4] On some date which the record does not clearly establish, Ogele played for the ISMP board a tape recording of a phone message from a Mr. Dan Neeson, an employee of the Department of Commerce's Bureau of Export Administration. The message stated that ''[m]ost medical products do not require an export license. And if you do require a license it would be for a particular country for a particular transaction. If you want more information, give me a call.'' Resp. Ex. 36. Respondent asserted that Ogele told the board that he had contacted DEA and that Mr. Neeson had left the above message. Tr. 293. The Bureau of Export Administration is not part of DEA and does not enforce the Controlled Substances Act.

[5] DEA did not become aware that Ogele had also made purchases from Priority Healthcare until after his arrest on September 22, 2004, at Hobby Airport in Houston, Texas.

testified that she told Mr. Ogele that she understood that ISMP would order 'medications, primarily AIDS and AIDS-related medications, but no IV injectables and no narcotics.'" ALJ at 5–6 (FOF 17) (quoting Tr. at 351). The ALJ also found that "Respondent did not anticipate that there would be any controlled substances ordered by ISMP." *Id.* at 6 (quoting Tr. at 351).

In her testimony, Respondent further maintained that she did not become aware that Ogele was using her registration to order controlled substances until January 15, 2004, when she was told this while being interviewed by DEA investigators. During cross examination, Respondent was asked whether she knew "there were any controlled substances being ordered?" Tr. 326. Respondent answered "No." *Id.* The Government then asked Respondent: "[Y]ou didn't know there were any controlled substances being ordered until DEA informed you in January of 2004, correct?" *Id.* Respondent answered: "Yes." *Id.*

The ALJ found, however, that a preponderance of the evidence "supports the conclusion that * * * Respondent knew that controlled substances were being ordered using her DEA registration." ALJ at 16 (FOF 61). Among other evidence, the ALJ noted the testimony of Dr. Green, another ISMP board member. Dr. Green testified that she had knowledge that Respondent allowed her registration to be used to obtain AIDS and pain medications, and that she and Ogele had also visited a company in the Midwest after which ISMP began receiving from it AIDS and "pain medications." Tr. 236.

The ALJ's finding does not, however, specify at what point in time Respondent knew that Ogele was using her registration to order controlled substances. Another finding appears to credit Respondent's testimony that she did not learn of this until the January 2004 DEA meeting and "was surprised" to find that Ogele was ordering controlled substances. ALJ at 10 (FOF 42).

To the extent this finding was intended to credit Respondent's testimony that she did not learn of the controlled substance purchases until January 2004, I reject it. Instead, I find that Respondent knew at least as early as May 2003, that Ogele was using her registration to order controlled substances.

In her letter requesting a hearing, Respondent filed a lengthy point by point response to the allegations of the Show Cause Order. See ALJ Ex. 2. In this filing, Respondent "admit[ted] that between May 2003 and August 2003 she authorized the ordering of hydrocodone or vicodin from R & S Sales." ALJ 2 at 2. Respondent further stated that "[t]he purpose of these orders was to ship the vicodin to Nigeria to aid in the treatment of women with AIDS and HIV." *Id.* More specifically, Respondent "admit[ted] to authorizing the ordering of three hundred bottles of hydrocodone (vicodin) from R & S * * * between May 2003 and August 2003," that the "drugs were ordered on behalf of" ISMP, and that they "were purchased under [Respondent's] license for the purposes of export to Nigeria to fulfill existing commitments that [ISMP] has with the Nigerian military and other Nigerian government entities." *Id.*

In this same document, Respondent further stated that in her November 24, 2003 telephone conversation with a DEA investigator, she "never said she was 'not ordering controlled substances' because vicodin and [T]ylenol #3 is an integral part of the treatment of AIDS/HIV in Nigeria." *Id.* at 3–4. Moreover, with respect to the order that was placed with R & S on November 26, 2003, Respondent "denie[d] ever having told the DEA agent that she was not ordering [V]icodin and Tylenol # 4 for the Nigeria project." *Id.* at 4. Respondent further "admit[ted] authorizing the order and that the drugs were shipped to the Broadway Street address." *Id.* Finally, Respondent stated that she "may not always have known the quantities of the substances ordered but she always knew what the drugs were that were being ordered and shipped. The orders are for standard quantities of particular drugs and do not vary very much, order to order." *Id.* at 4–5.

The ALJ did not acknowledge these admissions and thus did not discuss the fundamental inconsistencies between them and Respondent's statements under oath at the hearing. While I am mindful that the ALJ observed Respondent's testimony, deference to the ALJ's findings is clearly not appropriate where, as here, a witness tells two materially different tales and the ALJ gives no explanation as to why one is more credible than the other. Based on her written admissions, I thus find disingenuous Respondent's testimony on cross-examination that she did not become aware that Ogele was ordering controlled substances until the January 2004 interview with DEA investigators. And consistent with her admissions, I further find that Respondent knew at least as early as May 2003 that Ogele was ordering controlled substances.

Respondent's Response to Ogele's Misuse of Her Registration

On January 15, 2004, DEA investigators informed Respondent that an excessive amount of controlled substances had been ordered under her registration. Tr. 302. Furthermore, on January 26, 2004, DEA executed an administrative search warrant at ISMP's office and seized a substantial quantity of controlled substances.

Notwithstanding these two events, Respondent did not demand that Ogele produce the invoices. Furthermore, she did not even talk to Ogele about the matter until "probably April." *Id.* at 313.

In her testimony, Respondent asserted that the reason she did not talk to Ogele about the matter was because he "left the country * * * early the next morning." *Id.* Respondent testified, however, that Ogele had called her on January 26, 2004, the day that DEA investigators served the administrative warrant and told her that the investigators had already shown up at ISMP's office. *Id.* at 304. Respondent further testified that Ogele called her and asked her to go to the DEA office to conduct an inventory of the controlled substances because he "was getting ready to leave the country." *Id.* at 305. The inventory occurred on January 30. While Respondent did not testify as to the date this phone call occurred, it is clear that Ogele was in the country for a substantial period of time following Respondent's receipt of information that her registration was being misused (during the January 15, 2004 interview) and that she made no effort to investigate the matter for at least three months.

Respondent had long known that R & S Sales was one of ISMP's primary suppliers. Respondent testified that R & S was sending orders to her medical practice and that she contacted R & S in an attempt to have the orders shipped to the ISMP office. *Id.* at 267. Respondent did not, however, contact R & S during the period between the January 15 interview and service of the Show Cause Order to obtain copies of the invoices for the orders that had been placed under her registration. Furthermore, even following the service of the Show Cause Order, Respondent did not promptly contact R & S to obtain the invoices. *Id.* at 347; ALJ Ex. 2, at 5. While the record does not specify when Respondent finally contacted R & S, in her response to the Show Cause Order, Respondent stated that ISMP "has records of each drug shipment," ALJ Ex. 2, at 5, and made no mention that she had obtained or was then attempting to

obtain the records from R & S. Furthermore, when asked whether after service of the Show Cause Order she had ''ask[ed] any of the suppliers for records?,'' Respondent answered: ''[n]ot at that time.'' Tr. 347. Respondent further testified that she did not contact R & S until ''later.'' *Id.*

Respondent did not obtain copies of the invoices from Priority Healthcare until ''a few months'' before the hearing, when Ogele's wife found some invoices from Priority and contacted it to obtain copies of them for her. *Id.* Finally, Respondent did not testify that she ever attempted to exercise her right as a director of ISMP to examine its books, records, and documents. See, *e.g.*, Cal. Corp. Code section 6334 (West 2006).

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render [her] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. section 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); see also *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Finally, section 304(d) provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d). In this case I conclude that Factors Four and Five conclusively establish that allowing Respondent to hold a registration would be inconsistent with the public interest.[6] Analyzing these factors, I also conclude that Respondent's conduct created ''an imminent danger to the public health or safety,'' id., and thus affirm the immediate suspension of her registration.[7]

Factor Four—Respondent's Compliance With Applicable Laws

The evidence in this case establishes that Respondent acted with complete disregard for the obligations imposed on her as a registrant under federal law and regulations. These actions included entrusting her registration to someone she had no effective control over and knew little about, her total failure to comply with the CSA's recordkeeping requirements and to ensure the security of controlled substances, and her authorizing Ogele to use her registration to obtain controlled substances knowing that they would be exported to a foreign country without a registration. While the record shows that Respondent was motivated by humanitarian concerns and was likely duped by Ogele, Respondent's disregard for federal law cannot be excused.

As the evidence shows, Respondent entrusted her DEA number to Ogele shortly after meeting him and joining the ISMP board. She did so without investigating Ogele's background[8] and even though she had no effective control over him. Respondent's conduct violated the CSA because the Act does not authorize a registrant to allow an unregistered person to use her registration to handle controlled substances unless the latter is the employee or agent of the registrant. *See* 22 U.S.C. 822(c) (exempting from registration ''an agent or employee'' of a registrant but only ''if such agent or employee is acting in the usual course of his business or employment'').

Respondent argues that authorizing Ogele to use her DEA number is ''no different[t]'' than ''what goes on in the normal medical practice'' where ''[t]he doctor tells her nurse to order drugs under her number and the nurse does it on the doctor's behalf.'' ALJ Ex. 2 at 4. Contrary to Respondent's contention, there is a fundamental difference between what she did and what goes on in normal medical practices because Ogele was not her employee and thus was not subject to her control through the measures employers customarily use to discipline employees.

Moreover, Ogele was not Respondent's agent. The evidence clearly shows that Ogele did not act on Respondent's behalf but rather on behalf of ISMP and himself. The evidence further shows that Ogele was not Respondent's agent because while Respondent was a member of ISMP's board, she could not unilaterally remove him and had no effective means of controlling him. *See*, *e.g.*, *Restatement (Second) of Agency* section 1 (1958) (comment a) (''The relation of agency is created as a result of conduct by two parties manifesting that one of them is willing for the other to act for him subject to his control * * *. [T]he agent must act or agree to act on the principal's behalf and subject to his control.'');[9] Resp. Ex. 11. Respondent thus violated the CSA by entrusting her registration to Ogele, who was neither her employee nor her agent.

Respondent's conduct in authorizing Ogele to use her registration to order controlled substances violated the CSA for an additional reason. Respondent clearly contemplated that the drugs were being ordered to be shipped to Nigeria. A practitioner's registration, however, grants its holder authority to obtain controlled substances only for the limited purposes of conducting research or dispensing them to an ultimate user. *See* 21 U.S.C. 802(10) & (21); section 822(b). It does not provide its holder with authority to export a controlled substance. *Id.* section 822(b) (''Persons registered * * * under this subchapter to * * * dispense controlled substances * * * are authorized to possess * * * or dispense [controlled] substances * * * to the extent authorized by their registration.''). *See* also *id.* section 957(a) (''No person may * * * export from the United States any

[6] Having considered all of the factors, I deem it unnecessary to make findings on factors one, two, and three.

[7] While Respondent's registration has expired and she did not submit a renewal application, this case began with the immediate suspension of her registration and thus is not moot. See William R. Lockridge, 71 FR 77791, 77796–97 (2006). Furthermore, Respondent testified that while she had closed her office, she might return to the practice of medicine.

[8] DEA regulations provide that a ''registrant shall not employ as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances.'' 21 CFR 1301.76(a). As explained in the text, Ogele was neither an employee nor an agent of Respondent. While by its terms the regulation does not apply to Respondent, it nonetheless demonstrates the recklessness of Respondent's authorizing Ogele to use her registration without conducting a background investigation.

[9] *Cf. id.* § 14 C (comment b) (''An individual director * * * has no power of [her] own to act on the corporation's behalf, but only *as one of the body of directors acting as a board*.'') (emphasis added).

controlled substance * * * unless there is in effect with respect to such person a registration issued * * * under section 958 of this title.'').

Consistent with the statutory scheme, DEA regulations provide that dispensing and exporting are activities which are ''deemed to be independent of each other,'' 21 CFR 1301.13(e); exporting is not a ''coincident activity'' which is authorized under a practitioner's registration. *Id.* (Table). DEA regulations further require that ''[a]ny person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities.'' *Id.* 1301.13(e).

While there is some question regarding the extent to which the controlled substances were actually exported to Nigeria (as opposed to being sold by Ogele in this country)—largely because of Respondent's failure to ensure that proper records were being maintained—Ogele told DEA investigators that he was personally carrying drugs to Nigeria. Moreover, Respondent made numerous admissions that show that she was aware that the controlled substances were being ordered for the purpose of export to Nigeria. Thus, it is clear that Respondent violated 21 U.S.C. § 957(a) by exporting controlled substances without a registration.

Respondent also violated the Act by failing to adequately supervise Ogele's activities. Under DEA regulations, a registrant ''shall provide effective controls and procedures to guard against theft and diversion of controlled substances,'' 21 CFR 1301.71(a), including adequate systems ''for monitoring the receipt, * * * distribution, and disposition of controlled substances in its operations. *Id.* 1301.71(b)(14). Cf. *id.* 1301.71(b)(11) (require an assessment of ''[t]he adequacy of supervision over employees having access'' to controlled substances).

Respondent's supervision of Ogele's use of her registration was non-existent. As Respondent admitted, she ''may not always have known the quantities of the substances ordered.'' ALJ Ex. 2, at 4. Indeed, Respondent was clueless as to the scope of Ogele's ordering of controlled substances. *See* Tr. 328–29 (''I didn't supervise him'' (Ogele) to ensure that he was keeping records.); *id.* at 329 (''I wasn't following those records, no.'').

As the ALJ found, this was because Respondent did not ensure that the required records documenting the purchase and distribution of controlled substances were maintained. ALJ at 34; see, e.g., 21 CFR 1304.21(a) (''Every registrant required to keep records * * * shall maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, exported, or otherwise disposed of * * *.''). See also 21 CFR 1304.22. Nor did she ensure that the required inventories were conducted. *See id.* 1304.11.

The direct consequence of Respondent's abdication of her obligations as a registrant is that the disposition of an extraordinary quantity of controlled substances cannot be accounted for and the drugs have likely been diverted. Of the drugs Ogele obtained from R & S, more than 2.1 million dosage units are unaccounted for. Moreover, none of the drugs Ogele obtained from Priority Healthcare (which included nearly 47,000 dosage units of promethazine with codeine cough syrup, with a wholesale price of nearly $ 65,000) have been accounted for.

To be sure, Ogele ordered many of the drugs from Priority after DEA had told him to stop and Respondent was likely unaware of this. The fact remains, however, that Ogele would not have been able to do so if Respondent had never entrusted her registration to him in the first place. This Agency has previously held that a registrant who allows a non-registrant to use her registration is strictly liable for any misuse of the registration. *See Anthony L. Cappelli*, 59 FR 42,288 (1994).

Finally, the record establishes that Respondent authorized the ordering of controlled substances that were shipped to her former office in San Francisco which remained her registered location until December 1, 2003. Because Respondent had sold and vacated her office some eight months earlier, she had no effective means of securing the drugs that were delivered to this address. The record also establishes that with Respondent's authorization, controlled substances were being stored at ISMP's Richmond office even though this facility was not a registered location. Indeed, she did not even have a key for the office. Both the shipping of drugs to her former office and the shipping of drugs to the ISMP office when it was not her registered location violated the CSA.[10]

I thus conclude that Respondent's record of non-compliance with federal law is extensive and egregious. As the ALJ explained, Respondent's conduct ''evidences a reckless disregard for the legal obligations and responsibilities'' of a registrant. ALJ at 34. The direct consequence of Respondent's indifference to her obligations under the CSA was to provide a drug dealer with the means to obtain his wares and to create an ''imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

I thus affirm the immediate suspension of Respondent's registration. I further conclude that this factor provides reason alone to conclude that allowing Respondent to hold a DEA registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f).

Factor Five: Such Other Conduct Which May Threaten Public Health and Safety

As explained above, because of Respondent's failure to comply with the CSA and DEA regulations, it is likely that over two million dosage units of controlled substances have been diverted. Respondent, however, engaged in additional conduct which threatened public health and safety by failing to take prompt and reasonable action to investigate the circumstances surrounding Ogele's misuse of her registration.

On January 15, 2004, DEA investigators told Respondent that an excessive amount of controlled substances had been ordered under her registration. Tr. 302. Moreover, on January 26, 2004, DEA seized controlled substances that Ogele had ordered under her registration. Notwithstanding the seriousness of each of these events, Respondent did not demand that Ogele produce the invoices. Indeed, she did not even talk to Ogele about the matter until ''probably April.'' *Id.* at 313. Nor did she contact R & S Sales to independently obtain the invoices until some date after May 3, 2004.

Relatedly, the Show Cause Order, which was served on Respondent on April 5, 2004, alleged that ''the bulk of the controlled substances ordered under [her] * * * registration,'' which ''include[d] over 750,000 dosage units of Schedule III controlled substances'' could not be accounted for. Show Cause Order at 7. Furthermore, while there is conflicting evidence as to whether Respondent then attempted to obtain the invoices from Ogele, even giving her the benefit of the doubt on the issue,[11]

[10] Under the CSA, ''[a] separate registration [is] required at each principal place of business or professional practice where the [registrant] * * * distributes, or dispenses controlled substances.'' 21 U.S.C. 822(e). The primary purpose of this requirement is to ensure that adequate security exists at each location. *See* 21 CFR 1301.71.

[11] Compare Tr. 334 (Respondent answered ''no'' to Government's question regarding whether she had then attempted to obtain the invoices from Ogele) with ALJ Exh. 2 at 9 (listing in response to Show Cause Order seven different purchases of controlled substances).

Respondent did not then contact R & S to independently verify whether Ogele had provided her with all of the invoices. See Tr. 347. Those invoices would have shown that Ogele had ordered large amounts of additional controlled substances such as promethazine cough syrup with codeine and various benzodiazepines that were unrelated to ''the Nigeria project.'' Gov. Ex. 12 at 8, 13, 15, & 20. Nor did she exercise her right as a director of ISMP to inspect its books, records, and documents. See Cal. Corp. Code section 6334 (West 2006) (''Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind * * * of the corporation of which such person is a director.'').

By the date the Show Cause Order was served on her, Ogele had obtained other drugs from R & S and had also placed numerous orders with Priority Healthcare. See Gov. Ex. 11. Taking timely action such as obtaining the invoices from R & S would have uncovered the fact that Ogele was ordering additional controlled substances and engaged in diversion. Furthermore, exercising her right as a director to inspect all of ISMP's records including its accounts payable and checking account records would likely have shown that Ogele was ordering from an additional supplier.

To be sure, Ogele may have attempted to obstruct any such inquiry by withholding documents that showed that he was ordering controlled substances from Priority Healthcare. Respondent did not, however, take anything bordering on timely action to investigate the extent of Ogele's illegal use of her registration. Her failure to take even the most rudimentary steps to investigate the misuse of her registration was a breach of her duty as a registrant. Moreover, it likely allowed Ogele to continue his criminal activity well past the point at which it should have been stopped.

Consistent with a registrant's obligation to ''provide effective controls and procedures to guard against theft and diversion of controlled substances,'' 21 CFR 1301.71(a), every registrant has a duty to conduct a reasonable investigation upon receiving credible information to suspect that a theft or diversion has occurred. Performing a reasonable investigation is essential to preventing the continuation of criminal activity. While the precise scope of this duty necessarily depends upon the facts and circumstances, doing nothing for months—as Respondent did here—clearly warrants a finding that a registrant has committed acts which threaten public health and safety.

In her analysis of factor five, the ALJ further observed that Respondent ''exhibited no remorse for her conduct at the hearing'' and ''downplayed her misconduct.'' *Id.* at 36–37. I agree. Beyond that, I am especially disturbed by Respondent's testimony under oath that she did not know that Ogele was ordering controlled substances until DEA investigators informed her of this during the January 15, 2004 meeting. As explained above, this testimony was fundamentally inconsistent with the letter Respondent submitted in response to the Show Cause Order in which she stated that she had authorized the ordering of 300 bottles of hydrocodone and vicodin between May 2003 and August 2003. See, e.g., ALJ Ex. 2, at 2. Of course, Respondent's written statement was submitted before Ogele was arrested and pled guilty to drug offenses. I thus conclude that Respondent lied under oath to downplay her responsibility for supplying Ogele with the means to obtain his wares. Such conduct buttresses the conclusion that Respondent cannot be entrusted with a registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, the order of immediate suspension of DEA Certificate of Registration, AL8962993, issued to Rose Mary Jacinta Lewis, M.D., is hereby affirmed. The Office of Diversion Control is further directed to cancel Respondent's DEA number. This order is effective February 28, 2007.

Dated: January 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1318 Filed 1–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Wild West Wholesale Revocation of Registration

On August 18, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Wild West Wholesale (Respondent) of Cedaredge, Co. The Show Cause Order proposed to revoke Respondent's DEA Certificate of Registration, 005516WWY, as a distributor of list I chemicals, and to deny any pending applications for renewal or modification of the registration, on the ground that Respondent's continued registration is inconsistent with the public interest. Show Cause Order at 1.

The Show Cause Order specifically alleged that Respondent distributed list I chemical products containing ephedrine, a precursor chemical used to manufacture methamphetamine, a Schedule II controlled substance. *See id.* at 1–2. The Show Cause Order alleged that Respondent distributed combination ephedrine products to gas stations and convenience stores, which are non-traditional retailers of these products. *Id.* at 2. The Show Cause Order further alleged that Respondent was distributing ''approximately five or more case of various ephedrine products to its 45 customers each month,'' *id.*, and that only a very small percentage of the licit retail market for these products is sold in convenience stores and gas stations. *Id.* 2–3. Finally, the Show Cause Order alleged that Colorado and adjacent states ''have experienced a proliferation of small methamphetamine laboratories'' and that ''[l]aw enforcement officials have observed that a substantial proportion of precursors found at illicit methamphetamine sites have involved non-traditional brands sold through convenience stores.'' *Id.*

On September 26, 2005, the Show Cause Order was served on Respondent by first class mail.[1] On October 14, 2005, Respondent, through its counsel, requested a hearing. The case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who ordered the parties to prepare pre-hearing statements. However, on February 22, 2006, Respondent withdrew its request for a hearing. The ALJ then ordered that the proceeding be terminated so that the investigative file could be forwarded to me for final agency action.

I find that Respondent has waived its right to a hearing. I therefore enter this final order without a hearing based on information contained in the investigative file.

Findings

Respondent is a supplier of sundry items to approximately forty-five convenience stores and gas stations in western Colorado. Among the items

[1] The Show Cause Order was initially sent by certified mail to the street address of Respondent's registered location but was returned with a notation indicating that Respondent's owner had moved and that the time for forwarding mail had lapsed. This address was also used by Respondent's owner when she submitted a renewal application in April 2005. In May 2004, Respondent's owner had submitted a request for a change of its registered location to the address at which Respondent was eventually served.

which Respondent distributes are products containing the list I chemicals pseudoephedrine and ephedrine. Respondent is owned by Ms. Brenda Garcia and operated out of her home in Cedaredge, Co.

While ephedrine and pseudoephedrine have therapeutic uses, they are easily extracted from lawful over-the-counter products and are used in the illicit manufacture of methamphetamine, a schedule II controlled substance. *See* 21 U.S.C. 802(34). Methamphetamine is a powerful and addictive central nervous system stimulant. *See Gregg Brothers Wholesale Co.,* 71 FR 59830 (2006). The illegal manufacture and abuse of methamphetamine pose a grave threat to this county. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals used to make methamphetamine, its manufacture causes serious environment harms. *Id.*

Respondent holds Certificate of Registration, #005516WWY, which authorizes it to distribute pseudoephedrine and ephedrine at the registered location of 224 SW 13th Circle, Cedaredge, Co. Respondent's registration expired on May 31, 2005, and was subsequently retired on December 31, 2005. Respondent did, however, file a renewal application on April 28, 2005, which was received by DEA on May 5, 2005.

On May 12, 2004, Respondent's owner requested a modification of Wild West's registration seeking to change its registered location from the SW 13th Circle address to her home. Thereafter, on May 24, 2004, Respondent's owner submitted additional information. Included in this information was a sales report from one of Respondent's suppliers, Proactive Labs, Inc., which documented the firm's purchase of combination ephedrine products on various dates between December 12, 2002, and March 3, 2004. These records showed that during this period, Respondent purchased from Proactive Labs a total of 426,912 dosage units of combination ephedrine products. As noted in previous decisions, DEA has issued numerous warning letters to Proactive Labs because its products have been found repeatedly at illegal methamphetamine labs. *See D & S Sales,* 71 FR 37607, 37608 (2006).

Thereafter, on July 14, 2004, two Diversion Investigators (DIs) went to Respondent's new location to interview its owner and conduct a security inspection. During the interview, Respondent's owner told the DIs that list I chemicals comprised five to ten percent of its sales. She also informed them that Respondent obtained list I products from two additional suppliers. Respondent further provided the DIs with a customer list.

Several months later, one of the DIs contacted twelve of Respondent's customers. Most of the customers claimed either that they did not purchase, or purchased only small amounts of, list I products from Respondent.

On July 13, 2005, the DIs conducted an additional interview of Respondent's owner. During the interview, Respondent's owner told the DIs that Proactive Labs had been her exclusive supplier of ephedrine products since February 2005. Respondent's owner further told the DIs that the company had notified her that effective July 1, 2005, it was selling its products lines to Advantage Healthcare.

Respondent's owner informed the DIs that prior to July 1, 2005, when Colorado law changed to require that pseudoephedrine and ephedrine products be sold in blister packaging, she had sold 48-count bottles of Bronch-eze Asthma Relief, a combination ephedrine product. Respondent's owner stated that she paid $1.26 per bottle and that the bottles sold at retail for $5.99. Respondent's owner told the DIs that a 48-count blister package cost $1.49 per box and sold at retail for $6.99. She also informed the DIs that the six-count combination ephedrine blister packs cost $.25 each and sold at retail for $.99.

Respondent's owner provided the DIs with twelve invoices documenting its purchases of combination ephedrine products from Proactive Labs/Advantage Healthcare between January 31, 2005, and July 19, 2005. The invoices showed that Respondent had purchased $7003.80 worth of 48-count bottles and $2837.53 worth of six-count packets between January 31, 2005, and June 9, 2005. The two invoices for July 2005 showed that Respondent had purchased $1712.96 worth of 48-count blister pack boxes. Relatedly, at the time of the inspection, Respondent had on hand 543 bottles (48-count), which were to be returned following the change in Colorado law.

Based on the retail price information provided to the DIs, Respondent distributed combination ephedrine products with a retail sales value of $40,916.76,[2] over the approximately six-month period or $6819.46 per month. On a per store basis, the estimated average monthly retail sale of the products was $151.54.

In numerous cases, DEA has established through expert testimony the monthly expected sales of combination ephedrine products by non-traditional retailers such as convenience stores and gas stations to meet legitimate demand, i.e., the purchase of the products for their medically approved use as a bronchodilator to treat asthma. *See, e.g., T. Young Associates, Inc.*, 71 FR 60567, 60567 n.2 & 60568 (2006); *Tri-County Bait Distributors*, 71 FR 52160, 52161–62 (2006); *D & S Sales*, 71 FR 37607, 37608–09 (2006). In these cases, DEA has proved by substantial evidence that the monthly expected retail sales range for combination ephedrine products by non-traditional retailers is between $0 and $25, with an average of $12.58. *See T. Young*, 71 FR at 60568; *Tri-County Bait*, 71 FR at 52162; *D & S*, 71 FR at 37609. DEA has also established that a monthly retail sale of $60 of ephedrine products ''would occur about once in a million times in random sampling.'' *T. Young*, 71 FR at 60568 (int. quotations and citations omitted).

Respondent's owner also provided the DIs with a customer list. Using the customer list, a DI visited twenty-one of the stores and interviewed their managers regarding whether they sold list I products and, if so, the volume sold. At fifteen of the stores, the managers estimated that they were selling $60 or more per month of combination ephedrine products. Indeed, at ten of the stores, the managers estimated that they were selling $100 or more per month of the products, and at eight of the stores, the managers estimated that they were selling $300 or more per month.

Discussion

As an initial matter, the scope of this proceeding must be determined. According to the investigative file, Respondent's registration expired on May 31, 2005. On April 28, 2005, however, Respondent's owner submitted a renewal application. DEA received the application on May 5, 2005, and charged the application fee to its owner's credit card.

Under the Administrative Procedure Act (APA), ''[w]hen [a] licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.'' 5 U.S.C. 558(c). DEA's regulation which addresses renewal applications merely

[2] This figure was calculated based on the invoice amounts minus the inventory that was being returned.

states that ''[a]ny person who is registered may apply to be reregistered not more than 60 days before the expiration date of [her] registration.'' 21 CFR 1309.31(b). This regulation does not specify a date by which DEA must received a renewal application in order for an existing registration to be continued in accordance with the APA.

Another DEA regulation addresses the renewal of an existing registration when Show Cause Proceedings are pending. *See* 21 CFR 1309.45 (''Extension of registration pending final order''). This regulation provides that:

> [i]n the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator issues his order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

Id.

As demonstrated by its text, this regulation clearly contemplates that a Show Cause proceeding must be ongoing in order to trigger the requirement that a registrant submit a renewal at least 45 days in advance of the registration's expiration date in order to continue the registration. Here, however, Respondent's renewal was submitted four months before the Show Cause Order was issued and thus this regulation is not applicable. Instead, the timeliness of Respondent's renewal application is governed by 1309.31, which imposes no deadline by which the application must be filed. Therefore, I conclude that Respondent submitted a timely renewal application, and that under the APA, her registration has remained in effect pending the final order in this proceeding.

The Public Interest Analysis

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making this determination, Congress directed that I consider the following factors:

> (1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;
>
> (2) compliance by the applicant with applicable Federal, State, and local law;
>
> (3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
>
> (4) any past experience of the applicant in the manufacture and distribution of chemicals; and
>
> (5) such other factors as are relevant to and consistent with the public health and safety.

Id. section 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for a modification of a registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I conclude that Factors Four and Five establish that Respondent's continued registration would be ''inconsistent with the public interest,'' 21 U.S.C. 823(h), and that Respondent's registration should be revoked and its pending application for renewal should be denied.

Factors Four and Five—The Registrant's Past Experience in the Distribution of Chemicals and Other Factors Relevant to and Consistent With Public Health and Safety

As found above, the illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. Cutting off the supply source of methamphetamine traffickers is of critical importance in protecting the public from the devastation wreaked by this drug.

While combination ephedrine products have a legitimate medical use as a bronchodilator to treat asthma, DEA orders have established that convenience stores and gas stations constitute the non-traditional retail market for legitimate consumers of products containing ephedrine. *See, e.g., Tri-County Bait Distributors*, 71 FR at 52161; *D & S Sales*, 71 FR at 37609; *Branex, Inc.*, 69 FR 8682, 8690–92 (2004). DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy's Ideas*, 70 FR at 33199 (finding that the risk of diversion was ''real, substantial and compelling''); *Jay Enterprises*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' should application be granted)

DEA orders thus establish that the sale of certain list I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. *See, e.g., Joey Enterprises*, 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' *Id. See also TNT Distributors*, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); *OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); *MDI Pharmaceuticals*, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

Here, nearly all of Respondent's customers are convenience stores and gas stations, which are non-traditional retailers of list I chemical products. Most significantly, the investigative file establishes that the combination ephedrine products distributed by Respondent were not being sold to meet legitimate consumer demand but rather were being diverted to supply the illicit manufacturers of methamphetamine. As found above, the average monthly retail sales value of the combination ephedrine products distributed by Respondent was $151.54 per store. This

figure grossly exceeds the monthly expected sales range of $0 to $25 (with an average of $12.58) by convenience stores to meet legitimate demand for these products as an asthma treatment. *See T. Young*, 71 FR at 60568; *D & S Sales*, 71 FR at 37609.

Indeed, a monthly retail sale of $60 of ephedrine products at a convenience store should ''occur about once in a million times in random sampling.'' *T. Young*, 71 FR at 60568. The $151.54 average retail sale value of Respondent's products is 2.5 times this amount. Moreover, this figure is an average for all forty-five stores serviced by Respondent over a seven-month period. It is thus even more improbable than a one in a million probability that Respondent's products were being purchased to meet legitimate demand.

I therefore conclude that a substantial portion of Respondent's products were diverted into the illicit manufacture of methamphetamine. *See T. Young*, 71 FR at 60572; *D & S Sales*, 71 FR at 37611 (finding diversion occurred ''[g]iven the near impossibility that * * * sales were the result of legitimate demand''); *Joy's Ideas*, 70 FR at 33198 (finding diversion occurred in the absence of ''a plausible explanation in the record for this deviation from the expected norm'').[3] Moreover, ''the diversion of list I chemicals into the illicit manufacture of methamphetamine poses the same threat to public health and safety whether a registrant selsl the products knowing they will be diverted, sells them with a reckless disregard for the diversion, or sells them being totally unaware that the products were being diverted.'' *T. Young*, 71 FR at 60572 (citing *D & S Sales*, 71 FR at 37610–12, & *Joy's Ideas*, 70 FR at 33198). In short, the statutory text does not require that the Government prove that a registrant acted with any particular *mens rea* to sustain a public interest revocation. *T. Young*, 71 FR at 60572. Accordingly, adverse findings are warranted under these factors even if Respondent's owner was unaware that its products were being diverted.

Here, while Respondent (and its owner lacks a criminal record) and the file does not establish that Respondent has failed to comply with applicable laws or lacks effective controls,[4] I nonetheless conclude that Factors Four and Five compel the conclusion that Respondent's continued registration would be inconsistent with the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h) & section 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, 005516WWY, issued to Wild West Wholesale be, and it hereby is, revoked. I further order that Wild West Wholesale's pending applications for modification and/or renewal of its registration be, and they hereby are, denied. This order is effective February 28, 2007.

Dated: January 20, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1316 Filed 1–26–07; 8:45 am]

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[3] This finding is also supported by the customer verifications. At nearly half of the twenty-one stores visited, the managers told the DIs they were selling quantities of combination ephedrine products that would sell for $100 or more per month; at eight of the stores, the managers estimated that they were selling quantities of $300 or more per month.

[4] The Government bears the burden of proof on each factor even when a registrant waives its right to a hearing. In this case, the investigative file contains no evidence to support a finding that Respondent does not maintain effective controls because it was aware of diversion occurring at the retail level and failed to act.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0022]

Electronic Surveillance Technology Section; Agency Information Collection Activities: Current Collection; Comment Requested

ACTION: 30-Day Notice of Information Collection Under Review of a Currently Approved Collection for which to due to Expire; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 229, pages 69146–69147 on November 29, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional ''thirty days'' for public comment until February 28, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Porter Dunn, Federal Bureau of Investigation, U.S. Department of Justice, ESTS, 14800 Conference Center Drive, Suite 200, Chantilly, Virginia 20151.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval, without change, of a currently approved collection for which approval is due to expire.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, 28 CFR 100.9 *et seq*.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Cost Recovery Regulations have been adopted to assist the telecommunications industry in any submission of claims pursuant to Section 109(a) and (e) of the Communications Assistance for Law Enforcement Act, codified at 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 4 respondents to provide the information requested is approximately 4 hours per response and an estimated 5 responses (per respondent).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested through the Cost Recovery Regulations is therefore approximately 80 hours (4 respondents x 5 responses x 4 hours per response).

If additional information is required, contact: Lynn Bryant, Department Clearance Office, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 24, 2007.

Lynn Bryant,

Department Clearance Office, PRA, United States Department of Justice.

[FR Doc. E7–1358 Filed 1–26–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Dolphins America, LLC/Roanoke Rapids, North Carolina.

Principal Product: The loan, guarantee, or grant application is for facility construction and start-up operating budget. The NAICS industry code for this enterprise is 713110 (Amusement Parks—*e.g.,* theme, water).

DATES: All interested parties may submit comments in writing no later than February 12, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC, this 24th day of January, 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E7–1350 Filed 1–26–07; 8:45 am]

BILLING CODE 4510–30–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings Of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 1, 2007.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Collaborative Research in Philosophy, Science and Society, and Religion, submitted to the Division of Research Programs at the November 1, 2006 deadline.
2. *Date:* February 5, 2007.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Collaborative Research in Archaeology: New World, submitted to the Division of Research Programs at the November 1, 2006 deadline.
3. *Date:* February 6, 2007.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 421.
   Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the November 1, 2006 deadline.
4. *Date:* February 6, 2007.
   Time: 8:30 a.m. to 5 p.m.
   Room: Room LJ 113—Library of Congress.
   Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the August 15, 2006 deadline.

5. *Date:* February 7, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions: American History Editions, submitted to the Division of Research Programs at the November 1, 2006 deadline.
6. *Date:* February 8, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: Room LJ 113—Library of Congress.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the August 15, 2006 deadline.
7. *Date:* February 8, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for History, Art, and other Public Programs, submitted to the Office of Challenge Grants at the November 1, 2006 deadline.
8. *Date:* February 12, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in American Studies, submitted to the Division of Research Programs at the November 1, 2006 deadline.
9. *Date:* February 13, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Literature and the Arts, submitted to the Division of Research Programs at the November 1, 2006 deadline.
10. *Date:* February 14, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions: Philosophy, History of Science, Religion, and Music Editions, submitted to the Division of Research Programs at the November 1, 2006 deadline.
11. *Date:* February 15, 2007.
Time: 2 p.m. to 5:30 p.m.
Room: 420.
Program: This meeting, which will be by teleconference, will review applications for Digital Humanities Challenge Grants, submitted to the Office of Challenge Grants at the November 1, 2006 deadline.
12. *Date:* February 27, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Art and Anthropology, submitted to the Division of Preservation and Access at the October 3, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E7–1308 Filed 1–26–07; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; Notice; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Thursday, February 8, 2007, at 10:30 a.m.

PLACE: Oregon State University, Corvallis, Oregon (see below for meeting rooms and *http://oregonstate.edu/cw_tools/campusmap/* for a campus map).

STATUS: Some portions open, some portions closed.

Open Sessions

10:30 a.m.–10:45 a.m.
11 a.m.–11:30 a.m.
11:45 a.m.–12:15 p.m.
12:15 p.m.–1 p.m.
2:20 p.m.–3:50 p.m.

Closed Sessions

10:45 a.m.–11 a.m.
11:30 a.m.–11:45 a.m.
2 p.m.–2:10 p.m.
2:10 p.m.–2:20 p.m.

AGENCY CONTACT: Dr. Robert E Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/.*

MATTERS TO BE DISCUSSED:

Committee on Strategy and Budget (CH2M HILL Alumni Center, Room 111A/B)

Open Session (10:30 a.m.–10:45 a.m.)
- Approval of November 30, 2006 CSB Minutes.
- Committee Chairman's Remarks.
- Status of NSF FY 2007 and FY 2008 Budget Requests.

Closed Session (10:45 a.m.–11 a.m.)
- Impact of FY 2007 NSF budget appropriation on development of future NSF budgets.

Committee on Audit and Oversight (CH2M HILL Alumni Center, Room 111A/B)

Open Session (11 a.m.–11:30 a.m.)
- Approval of Minutes of November, 2006 Meeting.
- Chairman's Remarks.
- NSF Report on its Corrective Action Plan for Reportable Conditions in the FY2006 Financial Statement.
- OIG comments on the Corrective Action Plan.
- Chairman's Closing Remarks.

Closed Session (11:30 a.m.–11:45 a.m.)
- Update on ongoing investigation.

Committee on Programs and Plans (CH2M HILL Alumni Center, Room 111A/B)

Open Session (11:45 a.m.–12:15 p.m.)
- Approval of Minutes.
- Committee Chairman's Remarks.
- Task Force on Transformative Research Draft Report.

Committee on Education and Human Resources (CH2M HILL Alumni Center, Room 111A/B)

Open Session (12:15 p.m.–1 p.m.)
- Approval of November 2006 Minutes.
- Chairman's Remarks.
- Discussion of topics for future activities.

Plenary Executive Closed (Reser Stadium, Club Level, 2 p.m.–2:10 p.m.)
- Approval of November 2006 Minutes.
- Approval of Honorary Award Recipients.

Plenary Closed (Reser Stadium, Club Level, 2:10 p.m.–2:20 p.m.)
- Approval of November 2006 Minutes.
- Closed Committee Reports.

Plenary Open (Reser Stadium, Club Level, 2:20 p.m.–3:50 p.m.)
- Approval of November 2006 Minutes.
- Resolution to Close March 2007 Meeting.
- Chairman's Report.
- NSB Discussion: NSB Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics.
- Director's Report.
- Open Committee Reports.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. E7–1339 Filed 1–26–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7102–MLA; ASLBP No. 07–852–01–MLA–BD01]

Shieldalloy Metallurgical Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Shieldalloy Metallurgical Corporation (License Amendment Request for Decommissioning the Newfield Facility)

This Board is being established pursuant to a November 9, 2006 Notice of License Amendment Request and Opportunity to Request a Hearing (71 FR 66,986 (Nov. 17, 2006)), regarding the request of Shieldalloy Metallurgical Corporation (SMC) to amend its Source Material License No. SMB–743 to authorize the decommissioning of its Newfield Facility in Newfield, New Jersey. SMC submitted its revised Decommissioning Plan (DP) by letter dated June 30, 2006, and the NRC Staff found the DP acceptable to begin a detailed technical review of its adequacy. This proceeding concerns the requests for hearing submitted by the Attorney General for the State of New Jersey, the Gloucester County Board of Chosen Freeholders, the County of Cumberland, the Residents of Newfield, New Jersey (by Terry Ragone), and Loretta Williams.

This Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. William Reed, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 23rd day of January 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–1346 Filed 1–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Environmental Assessment and Finding of No Significant Impact Related to Exemption From the Recordkeeping Requirements of 10 CFR Part 50 for Dominion Nuclear Connecticut, Inc., License DPR–21, Millstone, Connecticut

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Mail Stop: T7E18, Washington, DC 20555–00001. Telephone: (301) 415–3017; e-mail: *jbh@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering granting a partial exemption from the recordkeeping requirements of Title 10 of the Code of Federal Regulations (10 CFR) 50.59(d)(3); 10 CFR 50.71(c); 10 CFR part 50, Appendix A Criterion 1; and 10 CFR part 50, Appendix B Criterion XVII, for the Millstone Power Station, Unit 1 (Millstone Unit 1) as requested by Dominion Nuclear Connecticut (DNC or the Licensee) on June 8, 2006. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of the exemption request.

II. Environmental Assessment

Background

Millstone Unit 1 was a single-cycle, boiling water reactor with a Mark I containment which was designed, furnished and constructed by General Electric Company as the prime contractor for the licensee. The General Electric Company engaged Ebasco Services Incorporated as the architect-engineer. Millstone Unit 1 had a reactor thermal output of 2011 megawatts and a net electrical output of 652.1 megawatts. The Millstone site is located in the town of Waterford, New London County, Connecticut, on the north shore of Long Island Sound.

Construction of Millstone Unit 1 was authorized by a provisional construction permit CPPR–20, on May 19, 1966, in AEC Docket 50–245. Millstone Unit 1 was completed and ready for fuel loading during October 1970. The plant went into commercial operation on December 28, 1970. On July 21, 1998, pursuant to 10 CFR 50.82(a)(1)(i) and 10 CFR 50.82(a)(1)(ii), the licensee certified to the NRC that, as of July 17, 1998, Millstone Unit No. 1 had permanently ceased operations and that fuel had been permanently removed from the reactor vessel. The issuance of this certification fundamentally changed the licensing basis of Millstone Unit 1 in that the NRC issued 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel.

Safety related structures, systems, and components (SSCs) and SSCs important to safety remaining at Millstone Unit 1 are associated with the spent fuel pool island where the Millstone Unit 1 spent fuel is stored. Other than non-essential systems supporting the balance of plant facilities, the remaining plant equipment has been de-energized, disabled and abandoned in place or removed from the unit and can no longer be used for power generation.

This EA has been developed in accordance with the requirements of 10 CFR 51.21.

Proposed Action

DNC is requesting an exemption from the record retention requirements of: (1) 10 CFR 50.59(d)(3), which requires certain records be maintained until ''termination of a license issued pursuant to'' Part 50; (2) 10 CFR 50.71(c) which requires that records required by the regulations, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification or if a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license; (3) 10 CFR Part 50 Appendix A Criterion 1, which requires certain records be retained ''throughout the life of the unit''; and (4) 10 CFR Part 50 Appendix B Criterion XVll, which requires certain records be retained consistent with regulatory requirements for a duration established by the licensee.

DNC proposes to eliminate record retention requirements for Millstone

Unit 1 SSCs associated with safe power generation that have been de-energized, disabled, and abandoned in place or removed from the unit. DNC is not requesting an exemption associated with record keeping requirements for storage of spent fuel in the Millstone Unit 1 spent fuel pool or for systems required to support the safe storage of spent fuel.

Need for Proposed Action

The requested exemption and application of the exemption will eliminate the requirement to maintain records that are no longer necessary due to the permanently shutdown status of the facility and thereby reduce the financial burden on ratepayers associated with the storage of a large volume of records.

Environmental Impacts of the Proposed Action

The proposed action is purely administrative in nature and will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site and there is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents, and it has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that the proposed action will have no significant effect on the environment.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Under this alternative DNC would continue to store the records in question until license termination which would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted

None.

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted, and a Finding of No Significant Impact is appropriate.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated June 8, 2006, (ADAMS Accession No. ML061590490). The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of January, 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–1345 Filed 1–26–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Regulatory Commission.

TIME AND DATE: 10 a.m., Thursday, February 1, 2007

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Agency organization—establishment of the Office of the Inspector General and the position of Inspector General of the Postal Regulatory Commission. 2. Agency organization—establishment of the Office of Public Affairs and Congressional Relations and the position of Director, Office of Public Affairs and Congressional Relations.

CONTACT PERSON FOR MORE INFORMATION: Steven W. Williams, Secretary, 202–789–6842 or *steven.williams@prc.gov.*

Dated: Thursday, January 25, 2007.

Steven W. Williams,

Secretary.

[FR Doc. 07–405 Filed 1–25–07; 2:55 pm]

BILLING CODE 7710–FW–M

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0006]

Early Identification and Intervention Demonstration Request for Applications; Program: Cooperative Agreements for Early Identification and Intervention Demonstrations (EIID); Program Announcement No. SSA–OPDR–07–01

AGENCY: Social Security Administration.

ACTION: Funding Opportunity; Initial announcement of availability of cooperative agreement funds for FY 2006 and request for applications.

SUMMARY: The Social Security Administration requests applications for cooperative agreement funding to support projects that will design and implement effective, replicable, and sustainable models which will increase the number of children (birth to age 5) who receive developmental screening and improve the early identification of children with developmental delays and/or disabilities.

Authority: Section 1110 of the Social Security Act (the Act) authorizes the cooperative agreement funding described in this announcement.

DATES: The closing date for receipt of cooperative agreement applications under this announcement is March 14, 2007. Section IV of this announcement contains instructions for submitting applications under this announcement.

Prospective applicants are also asked to submit, preferably by February 5, 2007, a fax, post card, letter, or e-mail of intent that includes (1) The program announcement number (SSA–OPDR–07–01) and title (Early Identification and Intervention Demonstrations (EIID)); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person.

The notice of intent should be (1) E-mailed to *Stephen.Evangelista@ssa.gov* using ''EIID—Notice of Intent'' in the

subject line; (2) faxed to (410) 965–9063 to the attention of Stephen Evangelista or (3) mailed to Social Security Administration, Office of Disability and Income Security Programs, 6401 Security Boulevard, Altmeyer 107, Baltimore, MD 21235, Attention: Stephen Evangelista.

The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice is to allow SSA staff to estimate the number of technical reviewers needed and to avoid potential conflicts of interest in the review.

ADDRESSES: All applications for funding under this announcement must be submitted via *http://www.grants.gov.*

Application Kit: Part VI of this announcement contains instructions for obtaining an application kit.

FOR FURTHER INFORMATION CONTACT: Stephen Evangelista, Office of Disability and Income Security Programs, 6401 Security Boulevard, Altmeyer 107, Baltimore, MD 21235, *Stephen.Evangelista@ssa.gov,* phone: 410–965–6522; or Leola Brooks, Office of Program Development and Research, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024, *leola.brooks@ssa.gov,* phone: 202–358–6294. When sending a question, use the program announcement number (SSA–OPDR–07–01) and the date of this announcement.

SUPPLEMENTARY INFORMATION: This overview of the Early Identification and Intervention Demonstration project is included to allow potential applicants to quickly learn the contents of this announcement, and to decide whether they are eligible to apply for the funding opportunity described. It follows the outline of the full text of the three sections of the announcement.

Program Description

The Social Security Administration (SSA) is making cooperative agreement funding available to support a project that will design and implement effective, replicable, and sustainable models which will increase the number of children (birth to age 5) who receive developmental screening and improve the early identification of children with developmental delays and/or disabilities.

This cooperative agreement will target children from birth to age 5 from the following populations: minority, unserved, underserved, native populations, homeless, premature infants, parental depression or serious emotional disturbance, foster care, low-income, inner city, rural, children affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, and children involved in a substantiated case of child abuse. Applicants should show how they intend to assure that participants from diverse populations are served by the project. Applicants must specify the geographic area to be covered by the project.

Awardees of cooperative agreement funding must design and implement a model system of early identification and intervention which increases developmental screening of children birth to age 5. Awardees must screen children from at least three of the target populations identified. The awardees and SSA will identify an agreed upon minimum set of screening instruments that can be supplemented depending on the needs of each child, which will be utilized in the project. If the screening reveals that a child has a potential disability or developmental delay, awardees will be required to provide appropriate assessment or refer the child for appropriate assessment. If an assessment reveals a disability or developmental delay, the awardees must provide appropriate early intervention services or refer the child for appropriate early intervention services. Awardees will also be required to provide transportation assistance through a case coordinator, have or develop relationships with providers of screening, assessment, and early intervention services and provide information to families regarding ombudsman or consumer advocacy services.

Awardees will be required to submit monthly data on participants enrolled in the project. SSA will monitor the outcomes of the project. SSA is particularly interested in ensuring that everything possible is done to ensure that children with developmental delays, children with disabilities and children at risk are identified as early as possible and receive whatever early intervention services they need to achieve their highest potential.

Award Information

SSA intends to fund two projects for up to 2 years subject to the availability of annual appropriations by Congress. SSA will fund project activities in year one and conduct data reporting activities in year two. SSA will award up to two cooperative agreements at up to $300,000 for the 2-year life of each cooperative agreement funded. These projects are authorized by section 1110 of the Act, and will be funded with cooperative agreements, which anticipate substantial involvement of the government in project design and operation.

Eligibility Information

Public and private organizations, including educational, nonprofit, profit-making, and faith-based organizations, may apply for cooperative agreement funding made available under this announcement. SSA favors applicants that can demonstrate experience with the full range of needs of children and families to facilitate the provision of needed services and supports beyond developmental screening. The Organization that is awarded funding must: have existing expertise in developmental screening and assessment or demonstrate an ability to refer children for screening, full assessment, and early intervention services; and assist participants to follow through with recommended assessments and early intervention services. The Organization that is awarded funding must be able to provide culturally competent services that are fully accessible to the target populations, including individuals who require accommodations.

Cooperative agreements may not be awarded to: any individual; Social Security Administration Field Offices (FO); State DDS offices; or any organization described in section 501(c)(4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, sub-grantees, or subcontractors. All applicants for Federal grants and cooperative agreements are required to provide a Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number. The DUNS number will be required whether an applicant is submitting a paper application or using the government wide electronic portal (www.grants.gov). Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Federal cooperative agreement funds are not to be used to cover costs that are reimbursable under an existing public or private program. Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at

least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent).

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Section I. Funding Opportunity Description (CFDA No. 96.007)

A. Introduction

The Federal government has recognized the importance and value of early intervention for children with disabilities. In the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Congress found, among other things, an urgent and substantial need:

1. To enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;

2. To reduce the educational costs to our society, including our nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

3. To maximize the potential for individuals with disabilities to live independently in society; and

4. To enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

Part C of IDEA provides financial assistance to States to, among other things, develop and implement statewide, comprehensive, coordinated, multidisciplinary, interagency systems that provide early intervention services for infants and toddlers with disabilities and their families.

IDEA defines an infant or toddler with a disability as an individual under age 3 who needs early intervention services because the individual is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay and may also include, at a State's discretion, at-risk infants and toddlers. The term also includes children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter or are eligible under State law to enter, kindergarten or elementary school, as appropriate.

An at-risk infant or toddler is defined as an individual under age 3 who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided.

Early intervention services are defined in Public Law 108–446 as developmental services that are provided under pubic supervision; are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and are designed to meet the developmental needs of an infant or toddler with a disability, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development.

Early intervention services include: family training, counseling, and home visits; special instruction; speech-language pathology and audiologist services, sign language and cued language services; occupational therapy; physical therapy; psychological services; coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and assistive technology services; and transportation and related costs that are necessary to enable the child or the child's family to receive another early intervention service. Services are to be provided by qualified personnel and to the maximum extent appropriate provided in natural environments, including the home, and community settings in which children without disabilities participate, and provided according to the individualized family service plan.

Part B of the IDEA also provides grants to assist States in providing special education and related services to children with disabilities age 3 through 5.

Developmental screening is a procedure designed to identify children who should receive more intensive assessment or diagnosis, for potential developmental delays and is critical to increasing the opportunity of more children to benefit from early intervention.

Many children with developmental delays are not being identified early. In the U.S., 17 percent of children have a developmental or behavioral disability such as autism, mental retardation, and attention-deficit/hyperactivity disorder. Moreover, many children have delays in language and other areas of development which impact school readiness. Yet, less than 50 percent of these children are identified as having a problem before starting school, by which time significant delays in development may already have occurred and opportunities for treatment missed.[1]

Many developmental screening tools are available. According to the American Academy of Pediatrics:

> There is no universally accepted screening tool appropriate for all populations and all ages. Currently available screening tools vary

[1] Department of Health and Human Services, Centers for Disease Control, National Center on Birth Defects and Developmental Disabilities, September 20, 2005—*http://www.cdc.gov/ncbddd/child/improve.htm.*

from broad general developmental screening tools to others that focus on specific areas of development, such as motor or communication skills. Their psychometric properties vary widely in characteristics such as their standardization, the comparison group used for determining sensitivity and specificity, and population risk status.;* * * Screening tests should be both reliable and valid, with good sensitivity and specificity.[2]

SSA has a strong interest in ensuring that everything possible is done to ensure children with developmental delays, children with disabilities, and children at risk are identified as early as possible and receive whatever early intervention services they need to achieve their highest potential. In October 2006, 1,084,000 children were receiving Supplemental Security Income (SSI) payments due to disability, representing 14.9 percent of the more than 7 million SSI beneficiaries.[3] That same month there were 1,635,000 childhood disability beneficiaries who received Social Security Disability Insurance (SSDI) benefits based upon the account of a parent (who receives benefits due to disability or retirement, or who is deceased).[4] In December 2005, more than 1,036,000 children with disabilities were receiving SSI payments.[5] Fifteen percent of these children were younger than five years old. The remaining 85 percent were fairly evenly distributed by age.[6] More than 66 percent had a mental disorder, and the largest proportion of this group (20 percent) had mental retardation.[7] Many children receiving SSI/SSDI benefits stay on the benefit rolls for life. In December 2005, the SSI rolls also included almost 681,000 adult recipients who first became eligible for SSI payments before age 18, 22 percent of whom first became eligible during the 1974–1980 period, indicating that they have been receiving SSI for much of their lives.[8] The earlier interventions are provided to address their needs, the more likelihood there is of better outcomes and less dependence on Federal support.

B. Data on Early Intervention

In 2001, nearly 250,000 children were identified as being at risk or having a developmental delay or disability before 36 months of age and were enrolled in Part C Early Intervention programs nationwide.

The National Early Intervention Longitudinal Study (NEILS)[9] is the first study of Part C of the IDEA EI system with a nationally representative sample of infants and toddlers with disabilities. According to NEILS[10] the variability in children in the EI system is marked by high proportions of children from low-income families, ethnic minorities, those in foster care, and males. Nearly one-third (32 percent) are low birth weight, four times the rate in the general population. Infants and toddlers in EI are eight times more likely to be rated as having fair or poor general health. Children enter at all ages across the first 3 years of life, but those eligible because of developmental delays enter as toddlers, in comparison with those eligible because of diagnosed conditions or subject to biological or environmental risk factors, who tend to enter in the first year of life. The variability of the infants and toddlers in EI indicates that there is no typical child in EI.

The research and data to date show that the reasons for a child's eligibility for services and the child's age at entry are significantly related. In general, infants and toddlers with diagnosed medical conditions, and those subject to environmental and biomedical factors, are at risk for developmental delays. In most cases, eligibility related to developmental delay requires that a child be old enough to show a notable discrepancy between development and age-expected skill mastery.

C. Background

SSA administers two programs that provide cash benefits for individuals with disabilities: SSDI and SSI.

SSDI Benefits. SSDI benefits are based on worker contributions to the Disability Insurance Trust Fund. There are two types of SSDI benefits: disability and dependents of those with disabilities. Individuals may be eligible for benefits based on their own contributions to the DI Trust Fund, or based on contributions of a family member. The amount of the benefit is based on the amount of the insured worker's contributions.

Individuals who receive SSDI benefits are eligible for Medicare after a 24-month entitlement period. Coverage under Medicare Part A (Hospital Insurance) is automatic. Beneficiaries must pay a premium to be covered by Part B, which pays for outpatient services, as well as certain medical supplies. Some beneficiaries may qualify for the State Medicaid program to pay their Medicare Part B premium.

SSI. The SSI program is financed from general federal revenue and provides monthly benefit payments to the elderly, blind, and individuals with disabilities who have limited resources and income. The maximum Federal benefit rate (FBR) is adjusted annually. Effective January 1, 2006, the Federal benefit rate is $603 for an individual and $904 for a couple. In addition, many States supplement the FBR. The supplementary benefit amounts and the categories of individuals eligible for these benefits vary from State to State. In most States, SSI beneficiaries are eligible for Medicaid; however, in a few States, individuals must file a separate application for Medicaid.

An individual or couple may have earned or unearned income and still may be eligible for the SSI program. Under numerous provisions, a certain amount of income is excluded in determining eligibility and computing the SSI benefit amount. People who live in a State that supplements the Federal payment may have higher amounts of income and still may qualify for some benefits.

Concurrent Eligibility. Some individuals may be eligible for benefits under both SSDI and the SSI program. Many individuals who receive SSDI benefits, who also have low incomes and limited assets, may qualify for Medicaid, or may qualify for their State Medicaid program to pay their Medicare premiums.

Disability Benefits. In December 2005, about 7.5 million people received Social Security disability benefits as disabled workers, disabled widow(er)s, or disabled adult children. As of December 2005, the number of SSI recipients was 7.1 million. Of this total, 4.1 million were between the ages of 18 and 64, 2 million were aged 65 and older, and 1 million were under age 18.

The Act establishes a stringent eligibility standard for benefits that applies to both SSDI/SSI claims. For individuals aged 18 or older, disability is defined as an inability to ''engage in

[2] American Academy of Pediatrics, Council on Children With Disabilities; Section on Developmental Behavioral Pediatrics; Bright Futures Steering Committee; and Medical Home Initiatives for Children With Special Needs Project Advisory Committee. Policy Statement: Identifying Infants and Young Children With Developmental Disorders in the Medical Home: An Algorithm for Developmental Surveillance and Screening, *Pediatrics*, 2006; 416.

[3] U.S. Social Security Administration, Office of Policy, Monthly Statistical Snapshot, October 2006, Table 3.

[4] U.S. Social Security Administration, Monthly Statistical Snapshot, October 2006, Table 2.

[5] Social Security Administration, *Children Receiving SSI, 2004*, SSA Publication No 13–11830, Released July 2005, page 1.

[6] Ibid.

[7] Ibid.

[8] Ibid, page 2.

[9] Scarborough, A.A., Spiker, D., Mallik, S., Hebbler, K.M., Bailey, D.B., & Simeonsson, R.J. (2004). A National Look at Children and Families Entering Early Intervention. *Exceptional Children*, 70, (4), 469–483.

[10] Scarborough, A.A., Spiker, D., Mallik, S., Hebbler, K.M., Bailey, D.B., & Simeonsson, R.J. (2004). A National Look at Children and Families Entering Early Intervention. *Exceptional Children, 70, (4), 469–483.*

substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' SGA refers to earnings from work. The amount of earnings that constitutes SGA is increased annually. In 2006, the SGA amount was $860 per month for individuals with a disability. The SGA amount for statutorily blind individuals for 2006 was $1,450 per month.

Individuals under age 18 may qualify for SSI benefits based on disability. To be eligible, a child must have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations. The impairment(s) must last or be expected to last 12 months or more, or to result in death. A child may not be considered eligible if he or she has earnings considered to be SGA.

SSA works cooperatively with the States, who are responsible for making eligibility determinations through their Disability Determination Services (DDS) offices. SSA takes a detailed medical history from the claimant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, schedules additional examinations, called consultative examinations (CE). Based upon this evidence and in combination with other evidence, such as vocational factors (age, education, and work history) a disability or blindness determination is made.

D. Project Goals and Objectives

The goal of this cooperative agreement will be to design and implement effective, replicable, and sustainable models which will increase the number of children with disabilities who receive developmental screening; improve the early identification of children with developmental delays and/or disabilities; and increase the self sufficiency of these children. This cooperative agreement will target children from birth to age 5.

The core objective of the project is to screen children (from birth to age 5), in the following general categories: Minority; unserved, underserved, native populations, homeless, premature infants, parental depression or serious emotional disturbance, foster care, low-income, inner city, rural, children affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure; and children involved in substantiated cases of child abuse. In collecting data on race and ethnicity, the study will follow the *Provisional Guidance on the Implementation of the 1997 Standards for the Collection of Federal Data on Race and Ethnicity*.

SSA is interested in learning the degree to which increased provision of screening, early identification, and early intervention services to children improves developmental outcomes including: Quality of life (full integration and inclusion in the community), educational outcomes, independence, employment, and overall self sufficiency. Improved developmental outcomes can be evaluated by tracking services received, educational placement, and special education services after initial screening and services.

E. Project Features

The Early Identification and Intervention Demonstration project will help SSA demonstrate the feasibility of special approaches to increasing the screening, early identification, and early intervention services and supports to children and determine how these services improve developmental outcomes. While SSA expects the grantee to make referrals and assist the screened children and their families in obtaining appropriate early intervention services, the focus of the cooperative agreement project is to increase the number of children (birth to age 5) who are screened for developmental delays and/or disabilities from the target populations identified.

1. Use of Cooperative Agreement Funds

The awardees must use cooperative agreement funds to address the goals and objectives described in Section I. D. To that end, SSA is interested in applications from public and private organizations, including educational, nonprofit, profit-making, and faith-based organizations.

SSA favors applicants that can demonstrate experience with the full range of needs of children and families to facilitate the provision of needed services and supports beyond developmental screening. SSA will allow latitude in developing and implementing effective models of early identification and intervention; however, there are standard features that SSA would like to test. Applicants may choose to add other features to make the demonstrations more effective and several examples are given in this regard.

2. Standard Project Features

The awardees who receive funds under this announcement must design and implement models of early identification and intervention. Specifically, the awardee must:

Screening

- Design a model system which increases the developmental screening of children birth to age 5, and uses quality screening tools as agreed upon with SSA.
- Screen for cognitive development, physical development, communication development, social or emotional development, and adaptive development and be culturally sensitive and linguistically appropriate. Screening must be done by a qualified professional who has been trained in the specific screening instruments that are being used and is credentialed in their State to do such a screening.
- Screen each child participating. If a child is screened and no potential disability is identified, the child shall have follow-up screening as necessary, but at least annually, through the duration of the project. After the final screening, a copy of the child's screening record shall be given to his/her family with any recommendation for future screening and referrals if appropriate.
- Screen children from at least three of the target populations identified;
- If a screening reveals that a child has a potential disability or developmental delay, provide an appropriate assessment or refer the child for an appropriate assessment.

Assessments

- If an assessment reveals a disability or developmental delay, provide appropriate early intervention services and support or refer the child for appropriate early intervention services and supports;

Support Services

- Provide transportation assistance via case coordinator. Assist with follow-through for assessments, appointments, and other actions necessary to obtain needed information and/or services and supports.
- Have a collaborative relationship with providers of screening, assessment, and early intervention services or develop such relationships in order to provide those screened with follow-ups.
- Provide information regarding ombudsman or consumer advocacy services at the beginning of a family's participation in the project for assistance with any future problems which may arise in connection with the project.

F. Monitoring Outcomes

The awardee shall design a model system which increases the developmental screening of children

(birth to age 5) and includes a quality screening tool(s). The awardee and SSA will identify an agreed upon minimum set of screening instruments that can be supplemented depending on the needs of each child, which will be utilized in the project. The screening instruments must be normed. If they are not normed, SSA and the awardee will develop and agree upon a method for comparing the project results to national screening data. The awardee will also be required to submit all screening instruments and assessment tools through OMB clearance. The awardee must make all data collected in the projects available to SSA.

The information obtained will be used to assist SSA in identifying possible changes in policies or procedures that could enhance service to the public or otherwise improve administration of either disability program. The reports will be disseminated to others involved in providing community-based services and early identification and intervention services to children with developmental delays and/or other disabilities and their families.

The cooperative agreement shall collect information discussed in paragraph G.1., which will help to answer questions including, but not limited to:

- How many children are screened?
- What is the frequency with which each screening instrument is used, and the relevant characteristics of the children being screened with the instrument (e.g., age, gender, target population, and other agreed upon information.)?
- How many children are referred for assessments based upon positive screening results, and the relevant characteristics of these children (e.g., age, gender, target population, and other agreed upon information)?
- How many children assessed are subsequently identified as having a developmental delay or disability?
- What delays or disabilities are identified and what are the relevant characteristics of these children (e.g., age, gender, target population, and other agreed upon information)?
- What early intervention services and supports are the children identified as having a developmental delay or disability referred for?
- How may children referred for early intervention services and supports successfully receive services upon referral?
- How many children screened are currently receiving SSI and/or SSDI benefits;
- The number of parents who are currently receiving SSI and/or SSDI benefits;
- Of the children identified as having a developmental delay or disability, how many subsequently apply for and are determined eligible for SSDI and/or/ SSI benefits?
- Of the children identified as having a developmental delay or disability, how many subsequently receive services under IDEA?

Enrollment Guidelines

The awardee is required to enroll and screen at least 50 children (birth to age 5), in each of the target populations selected to be screened. SSA encourages the grantee to serve large numbers of individuals to improve data collection. The goal is to serve children who are in the target populations described in paragraph D. above.

G. Data Collection

1. Data Elements

Grantees will submit a monthly project enrollees list by no later than the 15th of each month. This will be sent over a secure message server to SSA.

The initial list should contain all currently enrolled participants. Thereafter, monthly updates should list only participants newly enrolled or disenrolled during the previous calendar month.

All data elements are to be reported using precise definitions, which will be developed by SSA based upon the needs discussed above, as well as program data needed to monitor the program. Adherence to such definitions is crucial to the comparability of the data to national norms. The awardee must report these elements on the monthly ''project enrollees list.'' Specific instructions will be available at the time that the project begins enrollment. The data elements below will be provided to the grantees in a template format.

- Enrolled child's name, date of birth, and Social Security number (report only at time of enrollment);
- Percentages/numbers in each target population screened;
- Percentages/numbers identified for services using a screening tool;
- Primary/secondary disabilities identified;
- Percentages/numbers of families that complete an Individual Family Services Plan;
- Percentages/numbers of families that do not complete an Individual Family Services Plan and the reasons identified;
- Percentages/numbers identified that do not follow up at a local SSA field office and the reasons identified;
- SSA disability determination time;
- Percentages/number that follow up with collaborative referral sources;
- Referral number that enter Early Childhood Special Education (ECSE) services/programs, levels of ECSE used; and
- Referral sources utilized; *e.g.*, housing, medical, educational, etc.

Each grant recipient employee or subcontractor employee who will work on this cooperative agreement and will have access to Personally Identifiable Information of clients serviced by this project will have to complete Personnel Suitability Determination forms and be cleared through SSA prior to your organization collecting Personally Identifiable Information while working on this cooperative agreement. Those organizations awarded under this cooperative agreement will receive the necessary Personnel Suitability Determination forms as a part of any issued Notice of Award.

Definition of Personally Identifiable Information (PII). PII is defined as information that can be used, alone or in conjunction with any other information, to identify a specific individual. In short, any information that can be used to search for or identify individuals, or can be used to access their files, is PII. Examples of PII may include: name, Social Security Number, Social Security benefit data, date of birth, official State or Government issued driver's license or identification number, alien registration number, Government passport number, employer or taxpayer identification number, home address and medical information.

Note: Due to the fact that grantees will have access to confidential beneficiary information they are subject to SSA conducted background checks and fingerprinting in accordance with SSA personnel suitability requirements. SSA will distribute the necessary forms and consents for completion upon award.

2. Privacy

All personal information collected by grantees is protected by the Privacy Act of 1974, as amended. All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR Part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding participant information sharing paper/computer records data, and other issues potentially arising from a team approach to Early Identification Services. At a minimum, all paper records must be kept in locked file cabinets or desk drawers and all computer records must be secure password-protected files. All applications must describe proposed

practices for addressing clients' privacy and obtaining informed consent for any disclosure. The plan described in the applicant's project description must address the following elements:

• The development and use of a consent form that will allow the grantee to disclose clients' personal information to SSA. SSA will provide a suggested format for the consent form, which may either be adopted by the grantee, or tailored to include any State or agency-level requirements. Applicants selected under this announcement must provide SSA with a copy of the consent form. The Project Officer must approve this consent form prior to the enrollment of any project participants.

• The use of Form SSA–827, *Authorization to Disclose Information to the Social Security Administration.* This form is required as written authorization from a claimant for SSA to obtain information required for processing an application for disability benefits.

• The use of Form SSA–3288, Social Security Administration's *Consent for Release of Information.* This form will allow SSA to give information concerning the client to the grantee and to the evaluation contractor.

• If necessary, the awardee will obtain the approval of their Institutional Review Board (IRB), and furnish SSA with a copy of the approval document. Copies of the SSA–827 and SSA–3288 forms can be obtained on-line through the SSA Web site: *http://www.socialsecurity.gov/.*

3. Security Plan

All projects must write a security plan and reference the following elements. All plans must document how you are ensuring the security of Social Security records, all data files, including confidential information such as name, home address, social security number, or other personally identifiable information. Data is recorded information regardless of form or the media on which it may be recorded. The term includes computer software and information of a scientific or technical nature.

SSA Security Plan Elements

• Access Control—there must be logical access control utilizing a minimum two factor authentication (*i.e.*, PIN and password) protocol. Administration of access control authorization must involve two or more management personnel who are in a position to recognize and understand the duties of individuals seeking access to the SSA information, and who have the authority necessary to assure employment suitability requirements have been met prior to granting authorization. PINs and passwords must conform to SSA requirements as to length, acceptable characters and cyclical changes. Password administration also must have enforceable procedures for suspending/terminating access privileges when appropriate or necessary.

• Audit Trails—there must be a system for capturing audit trail information identifying the data accessed by authorized users, the time and date of their access, and whether they changed, copied or deleted information from the database. Audit trail records should be stored securely, be unalterable, and be accessible only to individuals with a ''need to know''.

• Encryption—SSA information stored on a mainframe, network server or workstation computer must be encrypted to prevent unauthorized access. SSA's (and the Federal Government's) standard for minimum encryption strength is DES–3 or greater. If any link of an intranet or extranet utilizes the public Internet, and SSA information will be transmitted from one site to another, it must be encrypted while in transit.

• Security Awareness and Employee Sanctions—security awareness training should occur prior to granting any employee access to SSA information, and repeated periodically as needed. Administrative procedures should be in place for sanctioning employees who violate data security policies or procedures, or who use SSA information inappropriately.

• Management Oversight—(see 1. above) In addition to the process described above for authorizing access to SSA information, projects must designate an official to be responsible for ongoing management oversight of these technical security requirements to ensure that only authorized employees have access to SSA information and to ensure there is compliance with the technical and procedural security requirements of the agreement with SSA.

Section II. Award Information

A. Statutory Authority and Catalog of Federal Domestic Assistance Number

The project derives its authority from section 1110 of the Act. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, Title 20, Parts 435 and 437. Applicants are urged to review the requirements in the applicable regulations. This program will be listed in the Catalog of Federal Domestic Assistance under Program No. 96.007, Social Security Administration—Research and Demonstration.

B. Type of Awards

Funding made available under this announcement will be in the form of a cooperative agreement between the government and the awardee. A cooperative agreement is a legal instrument reflecting a relationship between the U.S. Government and a recipient when the principal purpose is to transfer a thing of value to the recipient and substantial involvement is expected between the Agency and the recipient when carrying out the activity contemplated by the agreement. Involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving data collection and monitoring outcomes, grantee training, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

SSA has chosen to use cooperative agreements for funding projects to serve children with possible developmental delays and/or disabilities in order to assure accountability for funding and to maintain the ability to successfully monitor and evaluate projects.

C. Number, Size, and Duration of Projects

SSA intends to enter into two cooperative agreements for up to 2 years, subject to the availability of annual appropriations by Congress. SSA will fund project activities in the first year and will conduct data reporting activities in the second year.

SSA may suspend or terminate any cooperative agreement, in whole or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination, together with the effective date.

SSA plans to fund two projects, with an award of up to $300,000.

Section III. Eligibility Information

A. Eligible Applicants

Public and private organizations, including educational, nonprofit, profit-making, and faith-based organizations, may apply for cooperative agreement funding made available under this announcement.

The Organization that is awarded funding must:

- Have existing expertise in developmental screenings and assessments or demonstrate an ability to refer children for screening, full assessment and early intervention services, and assist participants to follow through with recommended assessments and early intervention services; and
- Be able to provide culturally competent services that are fully accessible to the target populations, including individuals who require accommodations. Cooperative agreements may not be awarded to:
- Any individual;
- Social Security Administration FOs;
- State DDS offices; or
- Any organization described in section 501(c)(4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, sub-grantees, or subcontractors. All applicants for Federal grants and cooperative agreements are required to provide a Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number. The DUNS number will be required whether an applicant is submitting a paper application or using the government wide electronic portal (www.grants.gov). Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

B. Cost Sharing or Matching

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). For example, an entity that is awarded a cooperative agreement of $100,000 (95 percent) would need a non-Federal share of at least $5,263 (5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

C. Targeted Populations

Congress recognizes the need for early intervention services through the New Freedom Initiative. President George W. Bush has also recognized the need to work to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, choose where to live, and participate in community life.[11] Therefore, this cooperative agreement will target: children (birth to age 5) who are minority, unserved, underserved, native populations, homeless, premature infants, parental depression or serious emotional disturbance, foster care, low-income, inner city, rural, children affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, and children involved in a substantiated case of child abuse.

The cooperative agreement awardee must make concerted and assertive efforts to provide appropriate services for screened infants and toddlers and their families with limited English proficiency, those who need accommodations related to a disability, and those who have needs for culturally sensitive services. In particular, applicants should show how they intend to assure that participants from diverse populations are served by the project.

Applicants must specify by district, county, municipality, or State the geographic area to be covered. If more than one site is proposed, the geographic area for each must be specified.

Section IV. Application and Submission Information

A. Address To Request Applications

An electronic application must be submitted through *www.grants.gov* for Funding Opportunity Number SSA–OPDR–07–1 unless submission of a paper application has been approved in writing by SSA. The *www.grants.gov,* Getting Started webpage is available to help explain the registration and application submission process. Additional helpful information is available in the Application Procedure section of the SSA Grants Web site at *http://www.socialsecurity.gov/oag/grants/ssagrant_info.htm*. If you experience problems with the steps related to registering to do business with the Federal government or application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov,* 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Gary Stammer, 410–965–9501 or Audrey Adams, 410–965–9469.

The *www.grants.gov* Web site is the primary means recommended for obtaining an application kit under this program announcement. Detailed procedures for completing and submitting applications are explained at *www.grants.gov.*

However, in the rare instances when an organization may not have access to the Internet, an application kit may be obtained by writing to: Grants Management Team, Office of Operations Contracts and Grants, OAG, Social Security Administration, 7111 Security Blvd., Suite 100, Baltimore, Maryland 21244.

B. Content and Form of Application Submission

1. Application Process

The cooperative agreement application process consists of a one-stage, full application. Independent reviewers will competitively review and score the application, using the evaluation criteria specified in this announcement. (See Section V).

2. Application Requirements

Applications will be initially screened for responsiveness to this announcement. If judged irrelevant, the application will be returned. Also, applications that do not meet the applicant eligibility criteria in Section III.A above will not be accepted.

a. Number of Copies: Not applicable for applications submitted through Grants.gov. When approved to submit a paper application (see section VI), the applicant must submit one original signed and dated application and a minimum of two copies. The submission of seven additional copies is optional and will be appreciated, but will not affect the evaluation or scoring of the application.

b. Length: A project abstract of not more than one page must precede the narrative of each application. The program narrative portion of the application may not exceed 30 double-spaced typed pages (or 15 single-spaced pages) on one side of the paper only, using standard (8½ x 11) size paper, and 12-point font. The attachments to support the program narrative count towards the 30-page limit. Resumes, job descriptions, and letters of cooperation/collaboration do not count in the 30-page limit. Section VI.B contains a detailed checklist for the application format.

c. Project Narrative: Each application must include a brief project abstract that does not exceed one page in length

[11] *New Freedom Initiative,* President George W. Bush, announced February 1, 2001.

before the narrative. The application narrative must not exceed 30 pages. Applicants must identify targeted age group(s) and location of the targeted service area(s) (*e.g.*, district, municipality or county, and/or independent city). The narrative must include an implementation plan that shows how the applicant will:

1. Report data elements;
2. Develop and submit quarterly reports that contain progress and status toward achieving goals and objectives to the Office of Acquisition and Grants (OAG);
3. Develop and submit semi-annual financial reports to SSA, OAG;
4. Meet with SSA Project Staff for an initial teleconference, within the first 90 days following award;
5. Begin to screen children (birth to age 5) for this project within 120 days after award;
6. Provide a description of any planned changes to the project design for approval by SSA prior to implementation;
7. Cooperate with SSA in scheduling and conducting site visits; and
8. Conduct activities designed to improve organizational capacity, gradually reduce reliance on cooperative agreement funds, and sustain the project activities after cooperative agreement funding is no longer available.

C. Submission Dates and Times

A complete application package must be received electronically by the Grants.gov portal no later that 11:59 p.m. Eastern Time on or before March 14, 2007. Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered.

D. Funding Restrictions

Federal cooperative agreement funds may be used for allowable costs incurred by awardees in conducting required and optional project activities, as described in Section I and paragraph E.1. These costs could include administrative and overall project management costs within the limitations established in this announcement.

Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI/SSI beneficiary can be charged for any service delivered under an Early Identification and Intervention cooperative agreement. Cooperative agreement funds may not be used to create new benefits or extensions of existing benefits.

E. Other Submission Requirements

All applications for funding under this announcement must be submitted via *www.grants.gov*, the process that the Federal government has established for electronic submission of applications for grant and cooperative agreement funding. If you experience technical difficulties related to the application submission, first contact Grants.gov support staff at *support@grants.gov*, 1–800–518–4726. If your difficulties are not resolved you may contact: Gary Stammer, SSA Grants Management Officer, at 410–965–9501 or *gary.stammer@ssa.gov*. In exceptional cases where submission through *www.grants.gov* is not possible, the applicant should contact the Grants Management Team (via specified contact information) to request approval and instructions for the submission of a paper application package.

Section V. Application Review Information

A. Criteria

There are three categories of criteria used to score applications: Capability; relevance/adequacy of project research design; and resources and management. The total points possible for an application are 100, and sections are weighted. The score for each application is the sum of its parts. Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well when making funding decisions.

The following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses). The application narrative should include the following sections in this order.

1. Capability (30 Points Total)

These criteria will be used to assess the applicant's capability to develop and manage a project. SSA will consider the following:

- Evidence of successful previous experience related to early identification and intervention (5 points).
- Evidence that the applicant will be able to successfully develop a model which increases developmental screening on children (birth to age 5) (10 points).
- Documentation of experience of the Project Director and key staff (5 points).
- Description of the qualifications, including relevant training and experience, of key project personnel, and the qualifications, including relevant training and experience, of project consultants or subcontractors, if built into project design (5 points).
- In determining the quality of project personnel, the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, age, or disability (5 points).

2. Project Design (30 Points Total)

The adequacy of project design will be judged by:

- A description of the project, including: How the project will be managed, the target populations, specific methods to be used, and a description of problems that may arise and specific measures that will be taken to mitigate them (*e.g.*, how dropouts and inadequate numbers of participants will be handled) (10 points).

The extent to which the project design reflects careful consideration of the potential for achieving successful outcomes and for project replication. This includes evidence of:

- An approach to outreach and early identification and intervention that can reasonably be expected to be successful, given the characteristics and needs of the target population; measurable methods for recruiting and serving the target population; service delivery to populations with special cultural or language requirements; consideration of the desired outcomes identified by SSA; and accessibility of facilities and service delivery methods that eliminate or reduce barriers to participation by individuals with disabilities (10 points).
- The extent to which goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable as indicated by a description of: project goals and objectives; outcome measures; time frames for accomplishing project milestones; and the relationship of proposed activities to the stated project goals (10 points).

3. Resources and Management (40 points total)

Resources and management will be judged by:

- A description of how the applicant will ensure that the perspectives of families of children at risk for disabilities or having developmental delays or disabilities influence the

operation of the project (*e.g.*, representation on a project or organizational advisory board) (5 points).

- Evidence that the applicant has a working knowledge of Federal, State, and local programs that serve children at risk for disabilities or having developmental delays or disabilities or other underserved individuals (5 points).
- Evidence of facilities, equipment, supplies, and other resources, from the applicant organization that are adequate to achieve project goals (5 points).
- Evidence that the applicant works cooperatively with other community-based service providers, as well as local and State funders/regulators (5 points).
- Evidence that the applicant directly provides or assists clients through referral and advocacy, a wide variety of services that lead to the early identification of developmental delays and/or disabilities and early intervention services for these children and their families, including, but not limited to:
  - Developmental screening; assessments; case coordination; early intervention services; other services and supports for children and families (10 points);
  - The extent to which the budget is adequate to support the proposed project (5 points); and
  - The extent to which the applicant has included plans for sustaining project activities after cooperative agreement funding ends (5 points).

B. Review and Selection Process

All applications that meet the deadline for application submission March 14, 2007 will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated. The results of this review and evaluation will assist the Commissioner in making award decisions.

Although the results of this review are a primary factor considered in making award decisions, the review score is not the only factor used. In selecting eligible applicants to be funded, consideration also may be given to achieving an equitable distribution of assistance among geographic regions of the country and to diverse populations.

Applications that are complete and conform to the requirements of this announcement will be reviewed competitively against the evaluation criteria specified in Section V.A. of this announcement.

Applications that pass the screening process will be independently reviewed by at least three individuals who will evaluate and score the applications based on the evaluation criteria specified in Section V.B.

C. Anticipated Announcement and Award Dates

Announcement of awards are anticipated on or before June 1, 2007.

D. Application Approval

A cooperative agreement award will be made pursuant to the availability of funds and at the discretion of SSA. The official award document is the Notice of Cooperative Agreement Award, which will provide the amount and purpose of the award, the duration of the agreement, the total project period for which support is contemplated, applicable reporting requirements, the amount of financial participation required from the applicant, and any special terms and conditions of the cooperative agreement.

Section VI. Award Administration Information

A. Award Notices

A cooperative agreement award will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the ''Notice of Cooperative Agreement Award.'' It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement. The Notice of Cooperative Agreement Award signed by the Grants Officer is the authorizing document. These awards will be issued via e-mail.

B. Administrative and National Policy Requirements

No administrative or national policy requirements have been identified by SSA for this project.

C. Reporting

The awardee will be required to submit progress and financial reports to SSA, Office of Acquisition and Grants. Progress reports are required quarterly and are due within 30 days following the end of each quarter (using the initial award date as the project start date). These reports will assist SSA in providing proper oversight and technical assistance to grantees. Financial Status Reports (SF269A) are required semi-annually. An interim report covering the first six months is due within 30 days following the end of the reporting period and a final report is due within 90 days following the end of each 12-month budget period.

Quarterly Progress Report Format:

- Description of the project (first quarter report only);
- Actions taken during the quarter;
- Planned activities for upcoming quarter(s);
- Number of enrolled children, to date, and at the close of the report period;
- Number of individuals who refused to enroll;
- Number of children screened;
- Number of children assessed or referred for assessment;
- Number of children provided with or referred to early intervention services or supports;
- Any problems or proposed changes in the project; and
- Additional summary information.

D. Monitoring

The SSA Project Officer (PO) will be responsible for ensuring the effective implementation of each cooperative agreement. SSA project personnel (PO and/or other staff) expect to visit the project at least once in each year of the cooperative agreement. In addition, regional or field office personnel may accompany the PO on site visits.

SSA project staff will hold conference calls on a national, regional, and/or local basis at least once monthly during start-up of the project (6 months following award), and at least quarterly during the rest of the project period. The purpose of these calls will be to coordinate activities, resolve problems, and provide oversight, support, and technical assistance to all parties.

E. Technical Assistance

SSA will provide technical assistance to the awardee and will monitor and evaluate the progress of the project. The awardee will be informed of the procedures for accessing technical assistance within 60 days following award. The awardee will be notified by e-mail about any changes in or additions to technical assistance procedures.

Section VII. Agency Contacts

Send questions about this announcement to Stephen Evangelista, Office of Disability and Income Security Programs, 6401 Security Boulevard, Altmeyer 107, Baltimore, MD 21235 phone: 410–965–6522; or Leola Brooks, Office of Program Development and Research, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024, *leola.brooks@ssa.gov*, phone: 202–358–6294. When sending a question, use the program announcement number (SSA–OPDR–07–01) and the date of this

announcement, January 29, 2007. Questions and answers will be posted to the What's New link on the Social Security Online Program Development and Research Web site (*http://www.ssa.gov/disabilityresearch*). The identity of questioners will not be revealed when questions and answers are posted on this Web site. All applicants are encouraged to review the Web site while developing their applications.

For general, non-programmatic information, regarding submission of applications, contact: Phyllis Y. Smith, Chief, Grants Management Officer, Social Security Administration, Office of Acquisition and Grants, 7111 Security Blvd., Suite 100, Baltimore, MD 21244, *phyllis.y.smith@ssa.gov*, phone: 410–965–9518.

VIII. Other Information

Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using the application package at *www.grants.gov* or via form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Catalog of Federal Domestic Assistance: No. 96.007, Social Security Administration, Research and Demonstration.

Dated: January 23, 2007.

Martin Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. E7–1347 Filed 1–26–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2004–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2004–11, Research Credit Record Retention Agreements. 2006–97, Taxation and Reporting of REIT Excess Inclusion Income.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Research Credit Record Retention Agreements.

OMB Number: 1545–1859.

Notice Number: Notice 2004–11.

Abstract: Notice 2004–11 announces a pilot program in which the Internal Revenue Service and large and mid-size business taxpayers may enter into research credit recordkeeping agreements (RCRAs). If the taxpayer complies with the terms of the RCRA, the Service will deem the taxpayer to satisfy the recordkeeping requirements of section 6001 for purposes of the credit for increasing research activities under section 41 of the Internal Revenue Code.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 65.

Estimated Average Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 1,170.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1297 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–TO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–TO, Terminal Operator Report.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Terminal Operator Report.

OMB Number: 1545–1734.

Form Number: 720–TO.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effect has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 504,000.

Estimated Time Per Respondent: 4 hrs, 40 minutes.

Estimated Total Annual Burden Hours: 2,347,020.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1299 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105885–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–105885–99 (TD 9075) Compensation Deferred Under Eligible deferred Compensation Plans (§ 1.457–8).

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Compensation Deferred Under Eligible Deferred Compensation Plans.

OMB Number: 1545–1580.

Regulation Project Number: REG–105885–99.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. REG–105885–99 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour 2 minutes.

Estimate Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1300 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–54

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–49, Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

OMB Number: 1545–2044.

Revenue Procedure Number: Rev. Proc. 2006–54.

Abstract: Taxpayers who believe that the actions of the United States, a treaty country, or both, result or will result in taxation that is contrary to the provisions of an applicable tax treaty are required to submit the requested information in order to receive assistance from the IRS official acting as the U.S. competent authority. The information is used to assist the taxpayer in reaching a mutual agreement with the IRS and the appropriate foreign competent authority.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 30 hours.

Estimated Total Annual Burden Hours: 9,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1301 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Announcement 151178–06]

Proposed Collection; Comment Request for Announcement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 151178–06, Settlement Initiative for Employees of Foreign Embassies, Foreign Consular Offices and International Organizations in the United States.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the announcement should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Settlement Initiative for Employees of Foreign Embassies, Foreign Consular Offices and International Organizations in the United States.

OMB Number: 1545–2045.

Announcement Number: 151178–06.

Abstract: The IRS has determined a substantial number of U.S. citizens and lawful permanent residents working in the international community have failed to fulfill their U.S. tax obligations. The IRS needs the information in order to apply the terms of the settlement and determine the amount of taxes, applicable statutory interest and penalties. The respondents are individuals employed by foreign embassies, foreign consular offices or international organizations in the United States.

Current Actions: There are no changes being made to this notice.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 11,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1302 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–T, Tuition Payment Statement.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Tuition Payments Statement.

OMB Number: 1545–1574.

Form Number: Form 1098–T.

Abstract: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Responses: 21,078,651.

Estimated Time Per Response: 13 minutes.

Estimated Total Annual Burden Hours: 4,848,090.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1303 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1345

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 1345, Handbook for Authorized IRS e-file Providers.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Publication 1345, Handbook for Authorized IRS e-file Providers.

OMB Number: 1545–1708.

Form Number: 1345.

Abstract: Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the

Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 145,000.

Estimated Time Per Respondent: 25 hours, 5 minutes.

Estimated Total Annual Burden Hours: 3,636,463.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1304 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208299–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final notice of proposed rulemaking, REG–208299–90, Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation (§§ 1.475(g)–2, 1.482–8, and 1.863–3).

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

OMB Number: 1545–1599.

Regulation Project Number: REG–208299–90.

Abstract: This regulation provides rules for the allocation among controlled taxpayers and sourcing of income, deductions, gains and losses from a global dealing operation. The information requested in §§ 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service we determine whether the taxpayer has entered into controlled transactions at an arm's length price.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 40 hours.

Estimate Total Annual Burden Hours: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1305 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Revenue Procedure 2004–12]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–12, Revenue Procedure 2004–12, Health Insurance Costs of Eligible Individuals.

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Costs of Eligible Individuals.

OMB Number: 1545–1875.

Revenue Procedure: 2004–12.

Abstract: Revenue Procedure 2004–12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: States, Local or Tribal Government.

Estimated Number of Respondents: 51.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 26.

The following paragraph applies to all the collections of information covered by this notice.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1306 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–27–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–27–91 (TD 8442), Procedural Rules for Excise Taxes Currently Reportable on Form 720 (§§ 40.6302(c)–3(b)(2)(ii), 40.6302(c)–3(b)(2)(iii), and 40.6302(c)–3(e).

DATES: Written comments should be received on or before March 30, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91.

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to return, payments, and deposits of tax for excise taxes currently reportable on Form 720.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 4,000.

Estimated Time Per Recordkeepers: 60 minutes.

Estimated Total Annual Recordkeeping Hours: 240,000.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden: 242,350.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1307 Filed 1–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERAMS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held at VA Central Office, 810 Vermont Avenue, NW., Washington, DC on April 25–26, 2007. The meeting will be held in Room 930 from 8:30 a.m. to 4:30 p.m. on April 25 and from 8 a.m. to 12 noon on April 26. This meeting is open to the public.

The purpose of the Committee is to provide advie to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and grontology by assessing the capability of VA health care facilities to meet the medical, psychological, and social needs of older veterans and by evaluating VA facilities designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations on VA research initiatives in areas that affect aging and dementia treatment initiatives. Other topics will include Primary Care Geriatrics Performance Measures and Geriatric Primary Care Panel Size Analysis, and performance oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee not less than 10 days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mr. Holt-Delaney, Program Analyst, at (202) 273–8540.

Dated: January 22, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–352 Filed 1–26–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
January 29, 2007

Part II

Department of State

Office of Ocean Affairs; New Conservation and Management Measures and Resolutions for Antarctic Marine Living Resources Under the Auspices of CCAMLR; Notice

DEPARTMENT OF STATE

[I.D. 121306C]

Office of Ocean Affairs; New Conservation and Management Measures and Resolutions for Antarctic Marine Living Resources Under the Auspices of CCAMLR

AGENCY: Office of Ocean Affairs, Department of State.

ACTION: Notice.

SUMMARY: At its Twenty-Fifth Meeting in Hobart, Tasmania, from October 23 to November 3, 2006, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation and management measures and resolutions, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twenty-Fifth meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR Web site at *www.ccamlr.org.* This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information, provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Gustavo A. Bisbal, Office of Ocean Affairs (OES/OA), Room 2665, Department of State, Washington, DC 20520; tel: 202–647–6927; fax: 202–647–1106; e-mail: *bisbalga@state.gov.*

SUPPLEMENTARY INFORMATION:

Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Conventional area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Review of existing conservation measures and resolutions:

The Commission noted that the following conservation measures will lapse on 30 November 2006: 32–09 (2005), 33–02 (2005), 33–03 (2005), 41–01 (2005), 41–02 (2005), 41–04 (2005), 41–05 (2005), 41–06 (2005), 41–07 (2005), 41–08 (2005), 41–09 (2005), 41–10 (2005), 41–11 (2005), 42–02 (2005), 52–01 (2005), 52–02 (2005) and 61–01 (2005). Conservation Measure 42–01 (2005) will lapse on 14 November 2006. All of these conservation measures dealt with general fishery matters for the 2005/06 season.

The Commission agreed that Conservation Measure 25–01 (1996) and Resolution 24/XXIV be rescinded.

The following conservation measures and resolutions will remain in force in 2006/07:

Compliance: 10–01 (1998) and 10–03 (2005).

General fishery matters: 22–01 (1986), 22–02 (1984), 22–03 (1990), 23–01 (2005), 23–02 (1993), 23–03 (1991), 23–04 (2000), 23–05 (2000), 23–06 (2005), 24–01 (2005), 24–02 (2005), 25–02 (2005) and 25–03 (2003).

Fishery regulations: 31–01 (1986), 32–01 (2001), 32–02 (1998), 32–03 (1998), 32–04 (1986), 32–05 (1986), 32–06 (1985), 32–07 (1999), 32–08 (1997), 32–10 (2002), 32–11 (2002), 32–12 (1998), 32–13 (2003), 32–14 (2003), 32–15 (2003), 32–16 (2003), 32–17 (2003) and 33–01 (1995).

Protected areas: 91–01 (2004), 91–02 (2004) and 91–03 (2004).

Resolutions: 7/IX, 10/XII, 14/XIX, 15/XXII, 16/XIX, 17/XX, 18/XXI, 19/XXI, 20/XXII, 21/XXIII and 23/XXIII.

The Commission revised the following conservation measures and resolution:

Compliance: 10–02 (2004), 10–04 (2005), 10–05 (2005), 10–06 (2005) and 10–07 (2005). The Commission also revised the Text of the CCAMLR System of Inspection.

General fishery matters: 21–01 (2002) and 21–02 (2005).

Fishery regulations: 41–03 (2005), 51–01 (2002), 51–02 (2002) and 51–03 (2002).

Resolution: 22/XXV

In addition, the Commission adopted 24 new measures and one new resolution.

For further information, see the CCAMLR web site at *www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2006/2007), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6210–1111).

Conservation Measures and Resolutions Adopted at CCAMLR–XXV

Conservation Measure 10–01 (1998) [1]

Marking of fishing vessels and fishing gear

(Species: all; Area: all; Season: all; Gear: all)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. All Contracting Parties shall ensure that their fishing vessels licensed [2] in accordance with Conservation Measure 10–02 to operate in the Convention Area are marked in such a way that they can be readily identified in accordance with internationally recognised standards, such as the FAO Standard Specifications and Guidelines for the Marking and Identification of Fishing Vessels.

2. Marker buoys and similar objects floating on the surface and intended to indicate the location of fixed or set fishing gear shall be clearly marked at all times with the letter(s) and/or numbers of the vessels to which they belong.

[1] Except for waters adjacent to Kerguelen and Crozet Islands

[2] Includes permitted

Conservation Measure 10–02 (2006) [1] [2]

Licensing and inspection obligations of Contracting Parties with regard to their flag vessels operating in the Convention Area

(Species: all; Area: all; Season: all; Gear: all)

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a

licence [3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia*, the following:

(i) timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) reporting by the vessel of catch data in accordance with CCAMLR requirements;

(iv) reporting, where possible as set out in Annex 10–02/A by the vessel of sightings of fishing vessels [4] in the Convention Area;

(v) operation of a VMS system on board the vessel in accordance with Conservation Measure.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- name of the vessel
- time periods authorised for fishing (start and end dates)
- area(s), subarea(s) or division(s) of fishing
- species targeted
- gear used.

4. From 1 August 2005, each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

(i) name of fishing vessel (any previous names if known) [5], registration number [6], IMO number (if issued), external markings and port of registry;

(ii) the nature of the authorisation to fish granted by the Flag State, specifying time periods authorised for fishing (start and end dates), area(s) of fishing, species targeted and gear used;

(iii) previous flag (if any) [5];

(iv) international Radio Call Sign;

(v) name and address of vessel's owner(s), and any beneficial owner(s) if known;

(vi) name and address of licence owner (if different from vessel owner(s));

(vii) type of vessel;

(viii) where and when built;

(ix) length (m);

(x) colour photographs of the vessel which shall consist of:

- one photograph not smaller than 12 × 7 cm showing the starboard side of the vessel displaying its full overall length and complete structural features;
- one photograph not smaller than 12 × 7 cm showing the port side of the vessel displaying its full overall length and complete structural features;
- one photograph not smaller than 12 × 7 cm showing the stern taken directly from astern;

(xi) where applicable, in accordance with Conservation Measure 10–04, details of the implementation of the tamper-proof requirements of the satellite monitoring device installed on board.

5. From 1 August 2005, each Contracting Party shall, to the extent practicable, also provide to the Secretariat at the same time as submitting information in accordance with paragraph 4, the following additional information in respect to each fishing vessel licensed:

(i) name and address of operator, if different from vessel owners;

(ii) names and nationality of master and, where relevant, of fishing master;

(iii) type of fishing method or methods;

(iv) beam (m);

(v) gross registered tonnage;

(vi) vessel communication types and numbers (INMARSAT A, B and C numbers);

(vii) normal crew complement;

(viii) power of main engine or engines (kW);

(ix) carrying capacity (tonnes), number of fish holds and their capacity (m^3);

(x) any other information in respect of each licensed vessel they consider appropriate (e.g. ice classification) for the purposes of the implementation of the conservation measures adopted by the Commission.

6. Contracting Parties shall communicate without delay to the Secretariat any change to any of the information submitted in accordance with paragraphs 3, 4 and 5.

7. The Executive Secretary shall place a list of licensed vessels on the CCAMLR Web site.

8. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

9. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its Exclusive Economic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

10. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Includes permit and authorisation.

[4] Including support vessels such as reefer vessels.

[5] In respect of any vessel reflagged within the previous 12 months, any information on the details of the process of (reasons for) previous deregistration of the vessel from other registries, if known.

[6] National registry number.

Annex 10–02/A

Reporting of Vessel Sightings

1. In the event that the master of a licensed fishing vessel sights a fishing vessel [4] within the Convention Area, the master shall document as much information as possible on each such sighting, including:

(a) name and description of the vessel

(b) vessel call sign

(c) registration number and the Lloyds/IMO number of the vessel

(d) Flag State of the vessel

(e) photographs of the vessel to support the report

(f) any other relevant information regarding the observed activities of the sighted vessel.

2. The master shall forward a report containing the information referred to in paragraph 1 to their Flag State as soon as possible. The Flag State shall submit to the Secretariat any such reports that meet the criteria of paragraph 3 of Conservation Measure 10–06 or paragraph 8 of Conservation Measure 10–07.

3. The Secretariat shall use such reports for compiling estimates of IUU activities.

Conservation Measure 10–03 (2005) [1 2 3]

Port inspections of vessels carrying toothfish

(Species: toothfish; Area: all; Season: all; Gear: all)

1. Contracting Parties shall undertake inspections of all fishing vessels carrying *Dissostichus* spp. which enter their ports. The inspection shall be for the purpose of determining that if the vessel carried out harvesting activities in the Convention Area, these activities were carried out in accordance with CCAMLR conservation measures, and that if it intends to land or tranship *Dissostichus* spp. the catch to be unloaded or transhipped is accompanied by a *Dissostichus* catch document required by Conservation Measure 10–05 and that the catch agrees with the information recorded on the document.

2. To facilitate these inspections, Contracting Parties shall require vessels to provide advance notice of their entry into port and to convey a written declaration that they have not engaged in or supported illegal, unreported and unregulated (IUU) fishing in the Convention Area. The inspection shall be conducted within 48 hours of port entry and shall be carried out in an expeditious fashion. It shall impose no undue burdens on the vessel or its crew, and shall be guided by the relevant provisions of the CCAMLR System of Inspection. Vessels which either declare that they have been involved in IUU fishing or fail to make a declaration shall be denied port access, other than for emergency purposes.

3. In the event that there is evidence that the vessel has fished in contravention of CCAMLR conservation measures, the catch shall not be landed or transhipped. The Contracting Party will inform the Flag State of the vessel of its inspection findings and will cooperate with the Flag State in taking such appropriate action as is required to investigate the alleged infringement and, if necessary, apply appropriate sanctions in accordance with national legislation.

4. Contracting Parties shall promptly provide the Secretariat with a report on the outcome of each inspection conducted under this conservation measure. In respect of any vessels denied port access or permission to land or tranship *Dissostichus* spp., the Secretariat shall promptly convey such reports to all Contracting Parties and to all non-Contracting Parties cooperating with the Commission by participating in the Catch Documentation Scheme for *Dissostichus* spp. (CDS).

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

Conservation Measure 10–04 (2006)

Automated satellite-linked Vessel Monitoring Systems (VMS) (Species: all except krill; Area: all; Season: all; Gear: all)

The Commission,

Recognizing that in order to promote the objectives of the Convention and further improve compliance with the relevant conservation measures,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objective of the Convention,

Recalling that Contracting Parties are required to cooperate in taking appropriate action to deter any fishing activities which are not consistent with the objective of the Convention,

Mindful of the rights and obligations of Flag States and Port States to promote the effectiveness of conservation measures,

Wanting to reinforce the conservation measures already adopted by the Commission,

Recognizing the obligations and responsibilities of Contracting Parties under the Catch Documentation Scheme for *Dissostichus* spp. (CDS),

Recalling provisions as made under Article XXIV of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall ensure that its fishing vessels, licensed [1] in accordance with Conservation Measure 10–02, are equipped with a satellite-linked vessel monitoring device allowing for the continuous reporting of their position in the Convention Area for the duration of the licence issued by the Flag State. The vessel monitoring device shall automatically communicate at least every four hours to a land-based fisheries monitoring centre (FMC) of the Flag State of the vessel the following data:

(i) fishing vessel identification;

(ii) the current geographical position (latitude and longitude) of the vessel, with a position error which shall be less than 500 m, with a confidence interval of 99%; and

(iii) the date and time (expressed in UTC) of the fixing of the said position of the vessel.

2. The implementation of vessel monitoring device(s) on vessels while participating only in a krill fishery is not currently required.

3. Each Contracting Party as a Flag State shall ensure that the vessel monitoring device(s) on board its vessels are tamper proof, i.e. are of a type and configuration that prevent the input or output of false positions, and that are not capable of being over-ridden, whether manually, electronically or otherwise. To this end, the on-board satellite monitoring device must:

(i) be located within a sealed unit; and

(ii) be protected by official seals (or mechanisms) of a type that indicate whether the unit has been accessed or tampered with.

4. In the event that a Contracting Party has information to suspect that an on-board vessel monitoring device does not meet the requirements of paragraph 3, or has been tampered with, it shall immediately notify the Secretariat and the vessel's Flag State.

5. Each Contracting Party shall ensure that its FMC receives Vessel Monitoring System (VMS) reports and messages, and that the FMC is equipped with computer hardware and software enabling automatic data processing and electronic data transmission. Each Contracting Party shall provide for backup and recovery procedures in case of system failures.

6. Masters and owners/licensees of fishing vessels subject to VMS shall ensure that the vessel monitoring device on board their vessels within the Convention Area is at all times fully operational as per paragraph 1, and that the data are transmitted to the Flag State. Masters and owners/licensees shall in particular ensure that:

(i) VMS reports and messages are not altered in any way;

(ii) the antennae connected to the satellite monitoring device are not obstructed in any way;

(iii) the power supply of the satellite monitoring device is not interrupted in any way; and

(iv) the vessel monitoring device is not removed from the vessel.

7. A vessel monitoring device shall be active within the Convention Area. It may, however, be switched off when the fishing vessel is in port for a period of more than one week, subject to prior notification to the Flag State, and if the Flag State so desires also to the Secretariat, and providing that the first

position report generated following the repowering (activating) shows that the fishing vessel has not changed position compared to the last report.

8. In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall communicate to the Flag State every six hours, and if the Flag State so desires also to the Secretariat, starting at the time that the failure or the non-functioning was detected or notified in accordance with paragraph 12, the up-to-date geographical position of the vessel by electronic means (e-mail, facsimile, telex, telephone message, radio).

9. Vessels with a defective vessel monitoring device shall take immediate steps to have the device repaired or replaced as soon as possible and, in any event, within two months. If the vessel during that time returns to port, it shall not be allowed by the Flag State to commence a further fishing trip in the Convention Area without having the defective device repaired or replaced.

10. When the Flag State has not received for 12 hours data transmissions referred to in paragraphs 1 and 8, or has reasons to doubt the correctness of the data transmissions under paragraphs 1 and 8, it shall as soon as possible notify the master or the owner or the representative thereof. If this situation occurs more than two times within a period of one year in respect to a particular vessel, the Flag State of the vessel shall investigate the matter, including having an authorised official check the device in question, in order to establish whether the equipment has been tampered with. The outcome of this investigation shall be forwarded to the CCAMLR Secretariat within 30 days of its completion.

11.[2] [3] Each Contracting Party shall forward VMS reports and messages received, pursuant to paragraph 1, to the CCAMLR Secretariat as soon as possible:

(i) but not later than four hours after receipt for those exploratory longline fisheries subject to conservation measures adopted at CCAMLR–XXIII; or

(ii) but not later than 10 working days following departure from the Convention Area for all other fisheries.

12. With regard to paragraphs 8 and 11(i), each Contracting Party shall, as soon as possible but no later than two working days following detection or notification of technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, forward the geographical positions of the vessel to the Secretariat, or shall ensure that these positions are forwarded to the Secretariat by the master or the owner of the vessel, or their representative.

13. Each Flag State shall ensure that VMS reports and messages transmitted by the Contracting Party or its fishing vessels to the CCAMLR Secretariat, are in a computer-readable form in the data exchange format set out in Annex 10–04/A.

14. Each Flag State shall in addition separately notify by e-mail or other means the CCAMLR Secretariat within 24 hours of each entry to, exit from and movement between subareas and divisions of the Convention Area by each of its fishing vessels in the format outlined in Annex 10–04/A. When a vessel intends to enter a closed area, or an area for which it is not licensed to fish, the Flag State shall provide prior notification to the Secretariat of the vessel's intentions. The Flag State may permit or direct that such notifications be provided by the vessel directly to the Secretariat.

15. Without prejudice to its responsibilities as a Flag State, if the Contracting Party so desires, it shall ensure that each of its vessels communicates the reports referred to in paragraphs 11 and 14 in parallel to the CCAMLR Secretariat.

16. Each Flag State shall notify the name, address, e-mail, telephone and facsimile numbers, as well as the address of electronic communication of the relevant authorities of their FMC to the CCAMLR Secretariat before 1 January 2005 and thereafter any changes without delay.

17. In the event that the CCAMLR Secretariat has not, for 48 consecutive hours, received the data transmissions referred to in paragraph 11(i), it shall promptly notify the Flag State of the vessel and require an explanation. The CCAMLR Secretariat shall promptly inform the Commission if the data transmissions at issue, or the Flag State explanation, are not received from the Contracting Party within a further five working days.

18. If VMS data received by the Secretariat indicate the presence of a vessel in an area or subarea for which no license details have been provided by the Flag State to the Secretariat as required by Conservation Measure 10–02, or in any area or subarea for which the Flag State or fishing vessel has not provided prior notification as required by paragraph 14, then the Secretariat shall notify the Flag State and require an explanation. The explanation shall be forwarded to the Secretariat for evaluation by the Commission at its next annual meeting.

19. The CCAMLR Secretariat and all Parties receiving data shall treat all VMS reports and messages received under paragraph 11 or paragraphs 20, 21, 22 or 23 in a confidential manner in accordance with the confidentiality rules established by the Commission as contained in Annex 10–04/B. Data from individual vessels shall be used for compliance purposes only, namely for:

(i) active surveillance presence, and/or inspections by a Contracting Party in a specified CCAMLR subarea or division; or

(ii) the purposes of verifying the content of a *Dissostichus* Catch Document (DCD).

20. The CCAMLR Secretariat shall place a list of vessels submitting VMS reports and messages pursuant to this conservation measure on a password-protected section of the CCAMLR Web site. This list shall be divided into subareas and divisions, without indicating the exact positions of vessels, and be updated when a vessel changes subarea or division. The list shall be posted daily by the Secretariat, establishing an electronic archive.

21. VMS reports and messages (including vessel locations), for the purposes of paragraph 19(i) above, may be provided by the Secretariat to a Contracting Party other than the Flag State without the permission of the Flag State only during active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection and subject to the time frames set out in paragraph 11. In this case, the Secretariat shall provide VMS reports and messages, including vessel locations over the previous 10 days, for vessels actually detected during surveillance, and/or inspection by a Contracting Party, and VMS reports and messages (including vessel locations) for all vessels within 100 n miles of that same location. The Flag State(s) concerned shall be provided by the Party conducting the active surveillance, and/or inspection, with a report including name of the vessel or aircraft on active surveillance, and/or inspection under the CCAMLR System of Inspection, and the full name(s) of the CCAMLR inspector(s) and their ID number(s). The Parties conducting the active surveillance, and/or inspection will make every reasonable effort to make this information available to the Flag State(s) as soon as possible.

22. A Party may contact the Secretariat prior to conducting active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection, in a given area and request VMS reports and messages (including vessel locations), for vessels in that area.

The Secretariat shall provide this information only with the permission of the Flag State for each of the vessels and according to the time frames set out in paragraph 11. On receipt of Flag State permission the Secretariat shall provide regular updates of positions to the Contracting Party for the duration of the active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection.

23. A Contracting Party may request actual VMS reports and messages (including vessel locations) from the Secretariat for a vessel when verifying the claims on a DCD. In this case the Secretariat shall provide that data only with Flag State permission.

24. The CCAMLR Secretariat shall annually, before 30 September, report on the implementation of and compliance with this conservation measure to the Commission.

[1] Includes vessels licensed under French domestic law and vessels licensed under South African domestic law.

[2] This paragraph does not apply to vessels licensed under French domestic law in the EEZs surrounding Kerguelen and Crozet Islands.

[3] This paragraph does not apply to vessels licensed under South African domestic law in the EEZ surrounding Prince Edward Islands.

ANNEX 10–04/A

VMS DATA FORMAT

['Position', 'Exit' and 'Entry' Reports/Messages]

Data element	Field code	Mandatory/ optional	Remarks
Start record	SR	M	System detail; indicates start of record.
Address	AD	M	Message detail; destination; 'XCA' for CCAMLR.
Sequence number	SQ	M[1]	Message detail; message serial number in current year.
Type of message	TM[2]	M	Message detail; message type, 'POS' as position report/ message to be communicated by VMS or other means by vessels with a defective satellite tracking device.
Radio call sign	RC	M	Vessel registration detail; international radio call sign of the vessel.
Trip number	TN	O	Activity detail; fishing trip serial number in current year.
Vessel name	NA	M	Vessel registration detail; name of the vessel.
Contracting Party internal reference number	IR	O	Vessel registration detail. Unique Contracting Party vessel number as ISO–3 Flag State code followed by number.
External registration number	XR	O	Vessel registration detail; the side number of the vessel.
Latitude	LA	M[3]	Activity detail; position.
Longitude	LO	M[3]	Activity detail; position.
Latitude (decimal)	LT	M[4]	Activity detail; position.
Longitude (decimal)	LG	M[4]	Activity detail; position.
Date	DA	M	Message detail; position date.
Time	TI	M	Message detail; position time in UTC.
End of record	ER	M	System detail; indicates end of the record.

[1] Optional in case of a VMS message.
[2] Type of message shall be 'ENT' for the first VMS message from the Convention Area as detected by the FMC of the Contracting Party, or as directly submitted by the vessel.Type of message shall be 'EXI' for the first VMS message from outside the Convention Area as detected by the FMC of the Contracting Party or as directly submitted by the vessel, and the values for latitude and longitude are, in this type of message, optional. Type of message shall be 'MAN' for reports communicated by vessels with a defective satellite tracking device.
[3] Mandatory for manual messages.
[4] Mandatory for VMS messages.

FORMAT FOR INDIRECT FLAG STATE REPORTING VIA E-MAIL

Code	Code definition	Field contents	Example	Field contents explanation
SR	Start record	No data		No data.
AD	Address	XCA	XCA	XCA = CCAMLR.
SQ	Sequence number	XXX	123	Message sequence number.
TM	Type of message	POS	POS	POS = position report, ENT = entry report, EXI = exit report.
RC	Radio call sign	XXXXXX	AB1234	Maximum of 8 characters.
NA	Vessel name	XXXXXXXX	Vessel Name	Maximum of 30 characters.
LT	Latitude	DD.ddd	−55.000	+/− numeral in GIS format. Must specify—for South and West, + for North and East.
LG	Longitude	DDD.ddd	−020.000	+/− numeral in GIS format.
DA	Record date	YYYYMMDD	20050114	8 characters only.
TI	Record time	HHMM	0120	4 characters only, using 24-hour time format. Do not use separators or include seconds.
ER	End record	No data		No data.

Sample string:
//SR//AD/XCA//SQ/001//TM/POS//RC/ABCD//NA/Vessel Name//LT/-55.000//LG/-020.000//DA/20050114//TI/0120//ER//.

Notes:

- Three fields in Annex 10–04/A are optional. These are:
  TN (trip number)
  IR (Contracting Party internal reference number): Must start with the 3-character ISO country code, e.g.
  Argentina = ARGxxx
  XR (external registration number).
- Do not include any other fields.
- Do not include separators (e.g. : . or /) in the date and time fields.

• Do not include seconds in the time fields.

Annex 10–04/B

Provisions on Secure and Confidential Treatment of Electronic Reports and Messages Transmitted Pursuant to Conservation Measure 10–04

1. Field of Application.

1.1 The provisions set out below shall apply to all VMS reports and messages transmitted and received pursuant to Conservation Measure 10–04.

2. General Provisions

2.1 The CCAMLR Secretariat and the appropriate authorities of Contracting Parties transmitting and receiving VMS reports and messages shall take all necessary measures to comply with the security and confidentiality provisions set out in sections 3 and 4.

2.2 The CCAMLR Secretariat shall inform all Contracting Parties of the measures taken in the Secretariat to comply with these security and confidentiality provisions.

2.3 The CCAMLR Secretariat shall take all the necessary steps to ensure that the requirements pertaining to the deletion of VMS reports and messages handled by the Secretariat are complied with.

2.4 Each Contracting Party shall guarantee the CCAMLR Secretariat the right to obtain as appropriate, the rectification of reports and messages or the erasure of VMS reports and messages, the processing of which does not comply with the provisions of Conservation Measure 10–04.

3. Provisions on Confidentiality

3.1 All requests for data must be made to the CCAMLR Secretariat in writing. Requests for data must be made by the main Commission Contact or an alternative contact nominated by the main Commission Contact of the Contracting Party concerned. The Secretariat shall only provide data to a secure e-mail address specified at the time of making a request for data.

3.2 In cases where the CCAMLR Secretariat is required to seek the permission of the Flag State before releasing VMS reports and messages to another Party, the Flag State shall respond to the Secretariat as soon as possible but in any case within two working days.

3.3 Where the Flag State chooses not to give permission for the release of VMS reports and messages, the Flag State shall, in each instance, provide a written report within 10 working days to the Commission outlining the reasons why it chooses not to permit data to be released. The CCAMLR Secretariat shall place any report so provided, or notice that no report was received, on a password-protected part of the CCAMLR Web site.

3.4 VMS reports and messages shall only be released and used for the purposes stipulated in paragraph 18 of Conservation Measure 10–04.

3.5 VMS reports and messages released pursuant to paragraphs 20, 21 and 22 of Conservation Measure 10–04 shall provide details of: name of vessel, date and time of position report, and latitude and longitude position at time of report.

3.6 Regarding paragraph 21 each inspecting Contracting Party shall make available VMS reports and messages and positions derived therefrom only to their inspectors designated under the CCAMLR System of Inspection. VMS reports and messages shall be transmitted to their inspectors no more than 48 hours prior to entry into the CCAMLR, subarea or division where surveillance is to be conducted by the Contracting Party. Contracting Parties must ensure that VMS reports and messages are kept confidential by such inspectors.

3.7 The CCAMLR Secretariat shall delete all the original VMS reports and messages referred to in section 1 from the database at the CCAMLR Secretariat by the end of the first calendar month following the third year in which the VMS reports and messages have originated. Thereafter the information related to the movement of the fishing vessels shall only be retained by the CCAMLR Secretariat after measures have been taken to ensure that the identity of the individual vessels can no longer be established.

3.8 Contracting Parties may retain and store VMS reports and messages provided by the Secretariat for the purposes of active surveillance presence, and/or inspections, until 24 hours after the vessels to which the reports and messages pertain have departed from the CCAMLR subarea or division. Departure is deemed to have been effected six hours after the transmission of the intention to exit from the CCAMLR subarea or division.

4. Provisions on Security.

4.1 Overview.

4.1.1 Contracting Parties and the CCAMLR Secretariat shall ensure the secure treatment of VMS reports and messages in their respective electronic data processing facilities, in particular where the processing involves transmission over a network. Contracting Parties and the CCAMLR Secretariat must implement appropriate technical and organisational measures to protect reports and messages against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all inappropriate forms of processing.

4.1.2 The following security issues must be addressed from the outset:

• System access control: The system has to withstand a break-in attempt from unauthorised persons.

• Authenticity and data access control:

The system has to be able to limit the access of authorised parties to a predefined set of data only.

• Communication security: It shall be guaranteed that VMS reports and messages are securely communicated.

• Data security:It has to be guaranteed that all VMS reports and messages that enter the system are securely stored for the required time and that they will not be tampered with.

• Security procedures: Security procedures shall be designed addressing access to the system (both hardware and software), system administration and maintenance, backup and general usage of the system.

4.1.3 Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing of the reports and the messages.

4.1.4 Security measures are described in more detail in the following paragraphs.

4.2 System Access Control

4.2.1 The following features are the mandatory requirements for the VMS installation located at the CCAMLR Data Centre:

• A stringent password and authentication system: Each user of the system is assigned a unique user identification and associated password. Each time the user logs on to the system he/she has to provide the correct password. Even when successfully logged on the user only has access to those and only those functions and data that he/she is configured to have access to. Only a privileged user has access to all the data.

• Physical access to the computer system is controlled.

• Auditing: selective recording of events for analysis and detection of security breaches.

• Time-based access control: access to the system can be specified in terms of times-of-day and days-of-week that each user is allowed to log on to the system.

• Terminal access control: specifying for each workstation which users are allowed to access.

4.3 Authenticity and Data Access Security

4.3.1 Communication between Contracting Parties and the CCAMLR Secretariat for the purpose of Conservation Measure 10–04 shall use secure Internet protocols SSL, DES or verified certificates obtained from the CCAMLR Secretariat.

4.4 Data Security

4.4.1 Access limitation to the data shall be secured via a flexible user identification and password mechanism. Each user shall be given access only to the data necessary for their task.

4.5 Security Procedures

4.5.1 Each Contracting Party and the CCAMLR Secretariat shall nominate a security system administrator. The security system administrator shall review the log files generated by the software for which they are responsible, properly maintain the system security for which they are responsible, restrict access to the system for which they are responsible as deemed needed and in the case of Contracting Parties, also act as a liaison with the Secretariat in order to solve security matters.

Conservation Measure 10–05 (2006)

Catch Documentation Scheme for *Dissostichus spp.*

(Species: toothfish; Area: all; Season: all; Gear: all)

The Commission,

Concerned that illegal, unreported and unregulated (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus spp.* at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. (CDS) will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the CDS,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. The following definitions are intended only for the purposes of the completion of CDS documents and shall be applied as stated regardless of whether such actions as landings, transhipments, imports, exports or re-exports constitute the same under any CDS participant's customs law or other domestic legislation:

(i) Port State: The State that has control over a particular port area or free trade zone for the purposes of landing, transhipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transhipment certification.

(ii) Landing: The initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed.

(iii) Export: Any movement of a catch in its harvested or processed form from territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other member State of that customs union.

(iv) Import: The physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transhipped within the definitions of 'landing' or 'transhipment' in this conservation measure.

(v) Re-export: Any movement of a catch in its harvested or processed form from territory under the control of a State, free trade zone, or member State of a customs union of import unless that State, free trade zone, or any member State of that customs union of import is the first place of import, in which case the movement is an export within the definition of 'export' in this conservation measure.

(vi) Transhipment: The transfer of a catch in its harvested or processed form from a vessel to another vessel or means of transport, and, where such transfer takes place within the territory under the control of a Port State, for the purpose of effecting its removal from that State. For the avoidance of doubt, temporarily placing a catch on land or an artificial structure to facilitate such transfer shall not prevent the transfer from being a transhipment where the catch is not 'landed' within the definition of 'landing' in this conservation measure.

2. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

3. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document (DCD) for the catch landed or transhipped on each occasion that it lands or transhipps *Dissostichus* spp.

4. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed DCD. The landing of *Dissostichus* spp. without a catch document is prohibited.

5. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. Each Contracting Party shall provide DCD forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

6. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue DCD forms, in accordance with the procedures specified in paragraphs 8 and 9, to any of its flag vessels that intend to harvest *Dissostichus* spp.

7. The procedure regarding cooperation with CCAMLR in the

implementation of the CDS by non-Contracting Parties involved in the trade of *Dissostichus* spp. is set out in Annex 10–05/C.

8. The DCD shall include the following information:

(i) the name, address, telephone and fax numbers of the issuing authority;

(ii) the name, home port, national registry number and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) the reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) the weight of each *Dissostichus* species landed or transhipped by product type, and

(a) by CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) by FAO statistical area, subarea or division if caught outside the Convention Area;

(v) the dates within which the catch was taken;

(vi) the date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped;

(vii) the name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

9. Procedures for completing DCDs in respect of vessels are set forth in paragraphs A1 to A10 of Annex 10–05/A to this measure. The standard catch document is attached to the annex.

10. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated DCD(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. The import, export or re-export of *Dissostichus* spp. without a catch document is prohibited.

11. An export-validated DCD issued in respect of a vessel is one that:

(i) includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 10–05/A to this measure;

(ii) includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

12. Each Contracting Party shall ensure that its customs government authorities or other appropriate government officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated DCD(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

13. If, as a result of an examination referred to in paragraph 12 above, a question arises regarding the information contained in a DCD or a re-export document, the exporting State whose government authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

14. Each Contracting Party shall promptly provide by the most rapid electronic means, copies to the CCAMLR Secretariat of all export-validated DCDs and, where relevant, validated re-export documents that it issued from and received into its territory and shall submit annually to the Secretariat a summary list of documents issued from or received into its territory in respect of transhipments, landings, exports, re-exports and imports. The list shall include: document identification numbers; date of landing, export, re-export, import; weights landed, exported, re-exported or imported.

15. Each Contracting Party, and any non-Contracting Party that issues DCDs in respect of its flag vessels in accordance with paragraph 6, shall inform the CCAMLR Secretariat of the government authority or authorities (including names, addresses, phone and fax numbers and e-mail addresses) responsible for issuing and validating DCDs.

16. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the CDS, may require additional verification of catch documents by Flag States by using, *inter alia*, VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

17. If, following an examination under paragraph 12, questions under paragraph 13 or requests for additional verification of documents under paragraph 16, it is determined, after consultation with the States concerned, that a catch document is invalid, the import, export or re-export of *Dissostichus* spp. being the subject of the document is prohibited.

18. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

19. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex 10–05/B.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

Annex 10–05/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) a four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued;

(ii) a three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) the master shall ensure that the information specified in paragraph 7 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) if a landing or transhipment includes catch of both *Dissostichus* spp.,

the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) if a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division and indicating whether the catch was caught in an EEZ or on the high seas, as appropriate;

(iv) the master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraph 1 of Conservation Measure 10–04), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available. The *Dissostichus* catch document will receive a confirmation number from the Flag State, only when it is convinced that the information submitted by the vessel fully satisfies the provisions of this conservation measure.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) in the case of a transhipment, the master shall confirm the transhipment obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is being transferred;

(ii) in the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(iii) in the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone;

(iv) in the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after each landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) the master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(ii) the master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade;

(iii) in the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) the exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) the exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document;

(iv) the exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document (including the attachments if provided) by a responsible official of the exporting State.

(v) the exporter shall indicate the transport details as appropriate:

if by sea
  container(s) number(s) if appropriate, or
  vessel name, and
  bill of lading number, date and place of issue;
if by air
  flight number, airway bill number,

place and date of issue;
if by other means (ground transportation)
truck registration number and nationality,
railway transport number, date and place of issue.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the Dissostichus catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) the re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) the re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s);

(iv) the re-exporter shall indicate the transport details as appropriate:
if by sea
container(s) number(s) if appropriate, or
vessel name, and
bill of lading number, date and place of issue;
if by air
flight number, airway bill number, place and date of issue;
if by other means (ground transportation)
truck registration number and nationality,
railway transport number, date and place of issue.

(v) the responsible official of the re-exporting State shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is attached to this annex.

[1] Excluding by-catches of Dissostichus spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

BILLING CODE 3510–22–P

DISSOSTICHUS CATCH DOCUMENT V 1.5

Document Number	**Flag State Confirmation Number**

PRODUCTION SECTION

1. Issuing Authority of Document

Name	**Address**	**Tel:** **Fax:**

2. Fishing Vessel Name	**Home Port & Registration Number**	**Call Sign**	**IMO/Lloyd's Number** (if issued)

3. Licence Number (if issued)	**Fishing dates for catch under this document** **4. From:**	**5. To:**

6. Description of Fish (Landed/Transhipped)					**7. Description of Fish Sold**	
Species	**Type**	**Estimated Weight to be Landed (kg)**	**Area Caught***	**Verified Weight Landed (kg)**	**Net Weight Sold (kg)**	**Recipient name, address, telephone, fax and signature.** Recipient Name:
						Signature:
						Address:
						Tel:
						Fax:

Species: **TOP** Dissostichus eleginoides, **TOA** Dissostichus mawsoni

Type: **WHO** Whole; **HAG** Headed and gutted; **HAT** Headed and tailed; **FLT** Fillet; **HGT** Headed, gutted, tailed; **OTH** Other (specify)

8. Landing/Transhipment Information: I certify that the above information is complete, true and correct. If any Dissostichus spp. was taken in the Convention Area, I certify that it was taken in a manner which is consistent with CCAMLR conservation measures.

Master of Fishing Vessel or Authorised Representative (print in block letters)	**Signature and Date**	**Landing/Transhipment Port and Country/Area**	**Date of Landing/Transhipment**

9. Certificate of Transhipment: I certify that the above information is complete, true and correct to the best of my knowledge.

Master of Receiving Vessel	**Signature**	**Vessel Name**	**Call Sign**	**IMO/Lloyds Number** (if issued)

Transhipment within a Port Area: countersignature by Port Authority if appropriate.

Name	**Authority**	**Signature**	**Seal (Stamp)**

10. Certificate of Landing: I certify that the above information is complete, true and correct to the best of my knowledge.

Name	**Authority**	**Signature**	**Address**	**Tel.**	**Port of Landing**	**Date of Landing**	**Seal (Stamp)**

EXPORT SECTION – TRANSPORT DETAILS

If by sea/air:	Container number (if more than one – attach list)	
If no container:	Vessel name; OR	

	Flight number; AND	
	Bill of lading/airway bill number; AND	
	Date and place of issue	
If ground transport:	Truck registration number and nationality; OR	
	Railway transport number; AND	
	Date and place of issue	

11. Description of Fish Exported			**12. Exporter Declaration**: I certify that the above information is complete, true and correct to the best of my knowledge.			
Species	**Product Type**	**Net Weight**	**Name**	**Address**	**Signature**	**Export Licence** (if issued)
			13. Export Government Authority Validation: I certify that the above information is complete, true and correct to the best of my knowledge.			
			Name/Title	**Signature**	**Date**	**Country of export seal (Stamp)**

14. IMPORT SECTION

Name of Importer **Address**

Point of Unlading: **Address** **State/Province** **Country**

City

- Report FAO Statistical Area/Subarea/Division where catch was taken and indicate whether the catch was taken on the high seas or within an EEZ

.	DISSOSTICHUS RE-EXPORT DOCUMENT		V1.2
RE-EXPORT SECTION		**Re-exporting Country:**	
1. Description of Fish			
Species	**Type of Product**	**Net Weight Exported (kg)**	**Dissostichus Catch Document Number Attached**

Species: **TOP** Dissostichus eleginoides, **TOA** Dissostichus mawsoni

Type: **WHO** Whole; **HAG** Headed and gutted; **HAT** Headed and tailed; **FLT** Fillet; **HGT** Headed, gutted, tailed; **OTH** Other (specify)

RE-EXPORT – TRANSPORT DETAILS

If by sea/air:	Container number	
	(if more than one – attach list)	
If no container:	Vessel name; OR	
	Flight number; AND	
	Bill of lading/airway bill number; AND	
	Date and place of issue	
If ground transport:	Truck registration number and nationality; OR	
	Railway transport number: AND	
	Date and place of issue	

2. Re-Exporter Certification: I certify that the above information is complete, true and correct to the best of my knowledge and that the above product comes from product certified by the attached Dissostichus Catch Document(s).

Name	**Address**	**Signature**	**Date**	**Export Licence (if issued)**

3. Re-Export Government Authority Validation: I certify that the above information is complete, true, and correct to the best of my knowledge.

Name/Title	**Signature**	**Date**	**Seal (Stamp)**

4. IMPORT SECTION

Name of Importer **Address**

Point of Unlading: **City** **State/Province** **Country**

BILLING CODE 3510–22–C

Annex 10–05/B

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination

of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by e-mail intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Annex 10–05/C

Procedure Regarding Cooperation With CCAMLR in the Implementation of the CDS by Non-Contracting Parties Involved in the Trade of *Dissostichus* Spp.

C1. Each year, the Executive Secretary shall contact all non-Contracting Parties which are known to be involved in the trade with *Dissostichus* spp. to urge them to become a Contracting Party to CCAMLR or to attain the status of a non-Contracting Party cooperating with CCAMLR by participating in the Catch Documentation Scheme for *Dissostichus* spp. (CDS) in accordance with the provisions of Conservation Measure 10–05. In doing so, the Executive Secretary shall provide copies of this conservation measure and any related resolutions adopted by the Commission.

C2. Any non-Contracting Party that seeks to be accorded the status of non-Contracting Party cooperating with CCAMLR by participating in the CDS shall apply to the Executive Secretary requesting such status. Such requests must be received by the Executive Secretary no later than ninety (90) days in advance of an annual meeting of the CAMLR Commission in order to be considered at that meeting.

C3. Any non-Contracting Party requesting the status of a non-Contracting Party cooperating with CCAMLR by participating in the CDS shall fulfil the following requirements in order to have this status considered by the Commission:

(i) Information requirements:

(a) communicate the data required under the CDS.

(ii) Compliance requirements:

(a) implement all the provisions of Conservation Measure 10–05;

(b) inform CCAMLR of all the measures taken to ensure compliance by its vessels used for the transhipments of *Dissostichus* spp. and its operators, including *inter alia*, and as appropriate, inspection at sea and in port, CDS implementation;

(c) respond to alleged violations of CCAMLR measures by its vessels transhipping *Dissostichus* spp. and its operators, as determined by the appropriate bodies, and communicate to CCAMLR the actions taken against operators.

C4. An applicant for the status of a non-Contracting Party cooperating with CCAMLR by participating in the CDS shall also:

(i) confirm its commitment to implement Conservation Measure 10–05; and

(ii) inform the Commission of the measures it takes to ensure compliance by its operators with Conservation Measure 10–05.

C5. The Standing Committee for Implementation and Compliance (SCIC) shall be responsible for reviewing requests for the status of non-Contracting Party cooperating with CCAMLR by participating in the CDS and for recommending to the Commission whether the applicants should be granted such status.

C6. Annually the Commission shall review the status granted to each non-Contracting Party and may revoke this status if the non-Contracting Party concerned has not complied with the criteria for attaining such status established by this measure.

Conservation Measure 10–06 (2006)

Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objective of the Convention,

Aware that a number of vessels registered to Parties and non-Parties are engaged in activities which diminish the effectiveness of CCAMLR conservation measures,

Recalling that Contracting Parties are required to cooperate in taking appropriate action to deter any activities which are not consistent with the objective of the Convention,

Resolved to reinforce its integrated administrative and political measures aimed at eliminating IUU fishing in the Convention Area,

hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. At each annual meeting, the Commission will identify those Contracting Parties whose vessels have engaged in fishing activities in the Convention Area in a manner which has diminished the effectiveness of CCAMLR conservation measures in force, and shall establish a list of such vessels (CP–IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

2. This identification shall be documented, *inter alia*, on reports relating to the application of Conservation Measure 10–03, trade information obtained on the basis of the implementation of Conservation Measure 10–05 and relevant trade statistics such as Food and Agriculture Organization of the United Nations (FAO) and other national or international verifiable statistics, as well as any other information obtained from Port States and/or gathered from the fishing grounds which is suitably documented.

3. Where a Contracting Party obtains information that vessels flying the flag of another Contracting Party have engaged in activities set out in paragraph 5, it shall submit a report containing this information, within 30 days of having become aware of it, to the Executive Secretary and the Contracting Party concerned. Contracting Parties shall indicate that the information is provided for the purposes of considering whether to include the vessel concerned in the CP–IUU Vessel List under Conservation Measure 10–06. The Executive Secretary shall within one business day circulate the report to the other Contracting Parties and to non-Contracting Parties cooperating with the Commission by participating in the Catch Documentation Scheme for *Dissostichus* spp. (CDS), and invite them to communicate any information available to them in respect of the vessels referred to above, including their ownership, operators and their trade activities.

4. For the purposes of this conservation measure, the Contracting Parties are considered as having carried out fishing activities that have diminished the effectiveness of the conservation measures adopted by the Commission if:

(i) the Parties do not ensure compliance by their vessels with the conservation measures adopted by the Commission and in force, in respect of the fisheries in which they participate that are placed under the competence of CCAMLR;

(ii) their vessels are repeatedly included in the CP–IUU Vessel List.

5. In order for a Contracting Party's vessel to be included in the CP–IUU Vessel List there must be evidence, gathered in accordance with paragraphs 2 and 3, that the vessel has:

(i) engaged in fishing activities in the CCAMLR Convention Area without a licence issued in accordance with Conservation Measure 10–02, or in violation of the conditions under which such licence would have been issued in relation to authorised areas, species and time periods; or

(ii) not recorded or not declared its catches made in the CCAMLR Convention Area in accordance with the reporting system applicable to the fisheries it engaged in, or made false declarations; or

(iii) fished during closed fishing periods or in closed areas in contravention of CCAMLR conservation measures; or

(iv) used prohibited gear in contravention of applicable CCAMLR conservation measures; or

(v) transhipped or participated in joint fishing operations with, supported or re-supplied other vessels identified by CCAMLR as carrying out IUU fishing activities (i.e. vessels on the CP–IUU Vessel List or the NCP–IUU Vessel List established under Conservation Measure 10–07); or

(vi) failed to provide, when required under Conservation Measure 10–05, a valid catch document for *Dissostichus* spp.; or

(vii) engaged in fishing activities in a manner that undermines the attainment of the objectives of the Convention in waters adjacent to islands within the area to which the Convention applies over which the existence of State sovereignty is recognised by all Contracting Parties, in the terms of the statement made by the Chairman on 19 May 1980; or

(viii) engaged in fishing activities contrary to any other CCAMLR conservation measures in a manner that undermines the attainment of the objectives of the Convention according to Article XXII of the Convention.

Draft CP–IUU Vessel List

6. The Executive Secretary shall, before 1 July of each year, draw up a draft list of Contracting Party vessels (the Draft CP–IUU Vessel List), listing all Contracting Party vessels that, on the basis of the information gathered in accordance with paragraphs 2 and 3, and any other information that the Executive Secretary might have obtained in relation thereto, and the criteria defined in paragraph 4, might be presumed to have engaged in any of the activities referred to in paragraph 5 during the period beginning 30 days before the start of the previous CCAMLR annual meeting. The Draft CP–IUU Vessel List shall be distributed immediately to the Contracting Parties concerned.

7. Contracting Parties whose vessels are included in the Draft CP–IUU Vessel List shall transmit their comments to the Executive Secretary before 1 September, including verifiable VMS data and other supporting information showing that the vessels listed have not engaged in the activities which led to their inclusion in the Draft CP–IUU Vessel List.

Provisional CP–IUU Vessel List

8. The Executive Secretary shall create a new list ('the Provisional CP–IUU Vessel List') which shall comprise the Draft CP–IUU Vessel List and all information received pursuant to paragraph 7. Before 1 October, the Executive Secretary shall transmit the Provisional CP–IUU Vessel List, the CP–IUU Vessel List agreed at the previous CCAMLR annual meeting, and any evidence or documented information received since that meeting regarding vessels on the Provisional CP–IUU Vessel List and CP–IUU Vessel List to all Contracting Parties and non-Contracting Parties cooperating with the Commission by participating in the CDS. The Executive Secretary shall at the same time:

(i) request non-Contracting Parties cooperating with the Commission by participating in the CDS that, to the extent possible in accordance with their applicable laws and regulations, they do not register or de-register vessels that have been placed on the Provisional CP–IUU Vessel List until such time as the Commission has had the opportunity to consider the List and has made its determination;

(ii) invite non-Contracting Parties cooperating with the Commission by participating in the CDS to submit any evidence or documented information regarding vessels on the Provisional CP–IUU Vessel List and CP–IUU Vessel List, at the latest 30 days before the start of the next CCAMLR annual meeting. Where the incident occurs within the month preceding the next CCAMLR annual meeting, evidence or documented information should be provided as soon as possible.

9. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable laws and regulations, in order that:

(i) they do not register or de-register vessels that have been placed on the Provisional CP–IUU List until such time

as the Commission has had the opportunity to examine the List and has made its determination;

(ii) if they do de-register a vessel on the Provisional CP–IUU Vessel List they inform, where possible, the Executive Secretary of the proposed new Flag State of the vessel, whereupon the Executive Secretary shall inform that State that the vessel is on the Provisional CP–IUU Vessel List and urge that State not to register the vessel.

Proposed and Final CP–IUU Vessel List

10. Contracting Parties shall submit to the Executive Secretary any additional information which might be relevant for the establishment of the CP–IUU Vessel List within 30 days of having become aware of such information and at the latest 30 days before the start of the CCAMLR annual meeting. A report containing this information shall be submitted in the format set out in paragraph 16, and Contracting Parties shall indicate that the information is provided for the purposes of considering whether to include the vessel concerned in the CP–IUU Vessel List under Conservation Measure 10–06. The Secretariat shall collate all information received and, where this has not been provided in relation to a vessel, attempt to obtain the information in paragraphs 16(i) to (vii).

11. The Executive Secretary shall circulate to Contracting Parties, at the latest 30 days before the start of the CCAMLR annual meeting, all evidence or documented information received under paragraphs 8 and 9, together with any other evidence or documented information received in terms of paragraphs 2 and 3.

12. At each CCAMLR annual meeting, the Standing Committee on Implementation and Compliance (SCIC) shall, by consensus:

(i) adopt a Proposed CP–IUU Vessel List, following consideration of the Provisional CP–IUU Vessel List and information and evidence circulated under paragraph 10. The Proposed CP–IUU Vessel List shall be submitted to the Commission for approval;

(ii) recommend to the Commission which, if any, vessels should be removed from the CP–IUU Vessel List adopted at the previous CCAMLR annual meeting, following consideration of that List and information and evidence circulated under paragraph 10.

13. SCIC shall include a vessel on the Proposed CP–IUU Vessel List only if one or more of the criteria in paragraph 5 have been satisfied.

14. SCIC shall recommend that the Commission should remove a vessel from the CP–IUU Vessel List if the Contracting Party proves that:

(i) the vessel did not take part in the activities described in paragraph 1 which led to the inclusion of the vessel in the CP–IUU Vessel List; or

(ii) it has taken effective action in response to the activities in question, including prosecution and imposition of sanctions of adequate severity; or

(iii) the vessel has changed ownership, including beneficial ownership if known to be distinct from the registered ownership, and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(iv) it has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

15. In order to facilitate the work of SCIC and the Commission, the Executive Secretary shall prepare a paper for each CCAMLR annual meeting, summarising and annexing all the information, evidence and comments submitted in respect of each vessel to be considered.

16. The Draft CP–IUU Vessel List, Provisional CP–IUU Vessel List, Proposed CP–IUU Vessel List and the CP–IUU Vessel List shall contain the following details:

(i) name of vessel and previous names, if any;

(ii) flag of vessel and previous flags, if any;

(iii) owner of vessel and previous owners, including beneficial owners, if any;

(iv) operator of vessel and previous operators, if any;

(v) call sign of vessel and previous call signs, if any;

(vi) Lloyds/IMO number;

(vii) photographs of the vessel, where available;

(viii) date vessel was first included on the CP–IUU Vessel List;

(ix) summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities.

17. On approval of the CP–IUU Vessel List, the Commission shall request Contracting Parties whose vessels appear thereon to take all necessary measures to address these activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, the nullification of the relevant catch documents and denial of further access to the CDS, and to inform the Commission of the measures taken in this respect.

18. Contracting Parties shall take all necessary measures, subject to and in accordance with their applicable laws and regulations and international law, in order that:

(i) the issuance of a licence to vessels on the CP–IUU Vessel List to fish in the Convention Area is prohibited;

(ii) the issuance of a licence to vessels on the CP–IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(iii) fishing vessels, support vessels, refuel vessels, mother ships and cargo vessels flying their flag do not in any way, in the Convention Area, assist vessels on the CP–IUU Vessel List by participating in any transhipment or joint fishing operations, supporting or resupplying such vessels;

(iv) vessels on the CP–IUU Vessel List should be denied access to ports unless for the purpose of enforcement action or for reasons of *force majeure* or for rendering assistance to vessels, or persons on those vessels, in danger or distress. Vessels allowed entry to port are to be inspected in accordance with relevant conservation measures;

(v) where port access is granted to such vessels:

(a) documentation and other information, including DCDs where relevant are examined, with a view to verifying the area in which the catch was taken; and where the origin cannot be adequately verified, the catch is detained or any landing or transhipment of the catch is refused; and

(b) where possible

i. in the event catch is found to be taken in contravention of CCAMLR conservation measures, catch is confiscated;

ii. all support to such vessels, including non-emergency refueling, resupplying and repairs is prohibited.

(vi) the chartering of vessels on the CP–IUU Vessel List is prohibited;

(vii) granting of their flag to vessels on the CP–IUU Vessel List is refused;

(viii) imports, exports and re-exports of *Dissostichus* spp. from vessels on the CP–IUU Vessel List are prohibited;

(ix) 'Export or Re-export Government Authority Validation' is not certified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel on the CP–IUU Vessel List;

(x) importers, transporters and other sectors concerned are encouraged to refrain from dealing with and from transhipping of fish caught by vessels on the CP–IUU Vessel List;

(xi) any appropriate information which is suitably documented is collected and submitted to the

Executive Secretary, to be forwarded to Contracting Parties, and non-Contracting Parties, entities or fishing entities cooperating with the Commission by participating in the CDS, with the aim of detecting, controling and preventing the importation or exportation of, and other trade-related activities relating to, catches from vessels on the CP–IUU Vessel List intended to circumvent this conservation measure.

19. The Executive Secretary shall place the CP–IUU Vessel List approved by the Commission on the public section of the CCAMLR Web site. Furthermore, the Executive Secretary shall communicate the CP–IUU Vessel List to the FAO and appropriate regional fisheries organisations to enhance cooperation between CCAMLR and these organisations for the purposes of preventing, deterring and eliminating IUU fishing.

20. The Executive Secretary shall circulate to non-Contracting Parties cooperating with the Commission by participating in the CDS the CP–IUU Vessel List, together with the request that, to the extent possible in accordance with their applicable laws and regulations, they do not register vessels that have been placed on the List unless they are removed from the List by the Commission.

21. If Contracting Parties obtain new or changed information for vessels on the CP–IUU Vessel List in relation to the details in paragraphs 16(i) to (vii), they shall notify the Executive Secretary who shall place a notification on the secure section of the CCAMLR Web site and advise all Contracting Parties of the notification. If there are no comments on the information within seven (7) days, the Executive Secretary will revise the CP–IUU Vessel List.

22. Without prejudice to their rights to take proper action consistent with international law, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations against vessels using as the basis for the action the fact that the vessel or vessels have been included in the Draft CP–IUU Vessel List drawn up by the Executive Secretary, pursuant to paragraph 6.

23. The Chair of the Commission shall request the Contracting Parties identified pursuant to paragraph 1 to take all necessary measures to avoid diminishing the effectiveness of CCAMLR conservation measures resulting from their vessels' activities, and to advise the Commission of actions taken in that regard.

24. The Commission shall review, at subsequent CCAMLR annual meetings, as appropriate, action taken by those Contracting Parties to which requests have been made pursuant to paragraph 23, and identify those which have not rectified their activities.

25. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified Contracting Parties. In this respect, Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with their obligations as members of the World Trade Organization, that may be necessary to prevent, deter and eliminate the IUU activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise diminish the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

Conservation Measure 10–07 (2006)

Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objective of the Convention,

Aware that a significant number of vessels registered to non-Contracting Parties are engaged in activities which diminish the effectiveness of CCAMLR conservation measures,

Recalling that Contracting Parties are required to cooperate in taking appropriate action to deter any activities which are not consistent with the objective of the Convention,

Resolved to reinforce its integrated administrative and political measures aimed at eliminating IUU fishing in the Convention Area,

hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. The Contracting Parties request non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined.

2. At each annual meeting the Commission shall identify those non-Contracting Parties whose vessels are engaged in IUU fishing activities in the Convention Area that threaten to undermine the effectiveness of CCAMLR conservation measures, and shall establish a list of such vessels (NCP–IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

3. This identification shall be documented, *inter alia*, on reports relating to the application of Conservation Measure 10–03, trade information obtained on the basis of the implementation of Conservation Measure 10–05 and relevant trade statistics such as Food and Agriculture Organization of the United Nations (FAO) and other national or international verifiable statistics, as well as any other information obtained from Port States and/or gathered from the fishing grounds which is suitably documented.

4. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or which has been denied port access, landing or transhipment in accordance with Conservation Measure 10–03 is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

5. When a non-Contracting Party vessel referred to in paragraph 4 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials in accordance with Conservation Measure 10–03 and shall not be allowed to land or tranship any fish species subject to CCAMLR conservation measures it might be holding on board unless the vessel establishes that the fish were caught in compliance with all relevant CCAMLR conservation measures and requirements under this Convention.

6. A Contracting Party which sights a non-Contracting Party vessel engaging in fishing activities in the Convention Area or denies a non-Contracting Party port access, landing or transhipment under paragraph 5 shall attempt to inform the vessel that it is presumed to be undermining the effectiveness of CCAMLR conservation measures, and that this information will be distributed to the Executive Secretary, all Contracting Parties and the Flag State of the vessel.

7. Information regarding such sightings or denial of port access, landings or transhipments, and the

result of all inspections conducted in the ports of Contracting Parties, and any subsequent action shall be transmitted within one business day to the Commission in accordance with Article XXII of the Convention. The Executive Secretary shall transmit this information to all Contracting Parties, within one business day of receiving it, and to the Flag State of the vessel concerned as soon as possible and to appropriate regional fisheries organisations. At this time, the Executive Secretary shall, in consultation with the Chair of the Commission, request the Flag State concerned that, where appropriate, measures be taken in accordance with its applicable laws and regulations to ensure that the vessel desists from any activities that undermine the effectiveness of CCAMLR conservation measures, and that the Flag State report back to CCAMLR on the results of such enquiries and/or on the measures it has taken in respect of the vessel. The other Contracting Parties and non-Contracting Parties cooperating with the Commission by participating in the Catch Documentation Scheme for *Dissostichus* spp. (CDS) shall be invited to communicate any information available to them in respect of the vessels referred to above, including their ownership, operators and their trade activities.

8. Where a Contracting Party obtains information that a non-Contracting Party vessel has engaged in activities set out in paragraph 9, it shall submit a report containing this information, within 30 days of having become aware of it, to the Executive Secretary (including where such information has already been transmitted under paragraph 7). Contracting Parties shall indicate that the information is provided for the purposes of considering whether to include the vessel concerned in the NCP–IUU Vessel List under Conservation Measure 10–07. In addition, the Contracting Party may also submit the report directly to the non-Contracting Party concerned. The Executive Secretary shall promptly forward the information to the non-Contracting Party concerned, indicating that it has been provided for the purposes of considering whether to include the vessel concerned in the NCP–IUU Vessel List under Conservation Measure 10–07. The Executive Secretary shall request that the Flag State take action to prevent the vessel undertaking any activities that undermine the effectiveness of CCAMLR conservation measures and that the Flag State report back to CCAMLR on the measures it has taken in respect of the vessel concerned. The Executive Secretary shall circulate the information and any report from the Flag State to all other Contracting Parties as soon as possible.

9. In order for a non-Contracting Party's vessel to be included in the NCP–IUU Vessel List, there must be evidence, gathered in accordance with paragraphs 3 and 8, that the vessel has:

(i) been sighted engaging in fishing activities in the CCAMLR Convention Area; or

(ii) been denied port access, landing or transhipment in accordance with Conservation Measure 10–03; or

(iii) transhipped or participated in joint fishing operations with, supported or resupplied other vessels identified by CCAMLR as carrying out IUU fishing activities (i.e. vessels on the NCP–IUU Vessel List or the CP–IUU Vessel List established under Conservation Measure 10–06); or

(iv) failed to provide, when required under Conservation Measure 10–05, a valid catch document for *Dissostichus* spp.; or

(v) engaged in fishing activities in a manner that undermines the attainment of the objectives of the Convention in waters adjacent to islands within the area to which the Convention applies over which the existence of State sovereignty is recognised by all Contracting Parties, in the terms of the statement made by the Chairman on 19 May 1980; or

(vi) engaged in fishing activities contrary to any other CCAMLR conservation measures in a manner that undermines the attainment of the objectives of the Convention according to Article XXII of the Convention.

Draft NCP–IUU Vessel List

10. The Executive Secretary shall, before 1 July of each year, draw up a draft list ('the Draft NCP–IUU Vessel List'), listing all non-Contracting Party vessels that, on the basis of the information gathered in accordance with paragraphs 3 and 8 and any other information that the Executive Secretary might have obtained in relation thereto, might be presumed to have engaged in any of the activities referred to in paragraph 9 during the period beginning 30 days before the start of the previous CCAMLR annual meeting. The Draft NCP–IUU Vessel List shall be distributed immediately to the non-Contracting Parties concerned and to all Contracting Parties.

11. The Executive Secretary shall invite non-Contracting Parties whose vessels are included in the Draft NCP–IUU Vessel List to transmit their comments to the Executive Secretary before 1 September, including verifiable VMS data and other supporting information showing that the vessels listed have not engaged in the activities which led to their inclusion in the Draft NCP–IUU Vessel List.

Provisional NCP–IUU Vessel List

12. The Executive Secretary shall create a new list ('the Provisional NCP–IUU Vessel List') which shall comprise the Draft NCP–IUU Vessel List and all information received pursuant to paragraph 11. Before 1 October, the Executive Secretary shall transmit the Provisional NCP–IUU Vessel List, the NCP–IUU Vessel List agreed at the previous CCAMLR annual meeting, and any evidence or documented information received since that meeting regarding vessels on the Provisional NCP–IUU Vessel List or the NCP–IUU Vessel List to all Contracting Parties and non-Contracting Parties cooperating with the Commission by participating in the CDS. The Executive Secretary shall at the same time:

(i) request non-Contracting Parties cooperating with the Commission by participating in the CDS that, to the extent possible in accordance with their applicable laws and regulations, they do not register or de-register vessels that have been placed on the List until such time as the Commission has had the opportunity to consider the List and has made its determination;

(ii) invite non-Contracting Parties cooperating with the Commission by participating in the CDS to submit any evidence or documented information regarding vessels on the Provisional NCP–IUU Vessel List and NCP–IUU Vessel List, at the latest 30 days before the start of the next CCAMLR annual meeting. Where the incident occurs within the month preceding the next CCAMLR annual meeting, evidence or documented information should be provided as soon as possible;

(iii) transmit the Provisional NCP–IUU Vessel List and any evidence or documented information received regarding vessels on that List to all non-Contracting Parties whose vessels are included in the List and who are not non-Contracting Parties cooperating with the Commission by participating in the CDS.

13. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable laws and regulations, in order that:

(i) they do not register vessels that have been placed on the Provisional NCP–IUU Vessel List until such time as the Commission has had the

opportunity to examine the List and has made its determination;

(ii) if they do de-register a vessel on the Provisional NCP–IUU Vessel List they inform, where possible, the Executive Secretary of the proposed new Flag State of the vessel, whereupon the Executive Secretary shall inform that State that the vessel is on the Provisional NCP–IUU Vessel List and urge that State not to register the vessel.

Proposed and Final NCP–IUU Vessel List

14. Contracting Parties shall submit to the Executive Secretary any additional information which might be relevant for the establishment of the NCP–IUU Vessel List within 30 days of having become aware of such information and at the latest 30 days before the start of the CCAMLR annual meeting. A report containing this information shall be submitted in the format set out in paragraph 20, and Contracting Parties shall indicate that the information is provided for the purposes of considering whether to include the vessel concerned in the NCP–IUU Vessel List under Conservation Measure 10–07. The Executive Secretary shall collate all information received and, where this has not been provided in relation to a vessel, attempt to obtain the information in paragraphs 20(i) to (vii).

15. The Executive Secretary shall circulate to Contracting Parties, at the latest 30 days before the start of the CCAMLR annual meeting, all evidence or documented information received under paragraphs 12 and 13, together with any other evidence or documented information received in terms of paragraphs 3 and 8.

16. At each CCAMLR annual meeting, the Standing Committee on Implementation and Compliance (SCIC) shall, by consensus:

(i) adopt a Proposed NCP–IUU Vessel List, following consideration of the Provisional NCP–IUU Vessel List and information and evidence circulated under paragraph 14. The Proposed NCP–IUU Vessel List shall be submitted to the Commission for approval;

(ii) recommend to the Commission which, if any, vessels should be removed from the NCP–IUU Vessel List adopted at the previous CCAMLR annual meeting, following consideration of that List and information and evidence circulated under paragraph 14.

17. SCIC shall include a vessel on the Proposed NCP–IUU Vessel List only if one or more of the criteria in paragraph 9 have been satisfied.

18. SCIC shall recommend that the Commission should remove a vessel from the NCP–IUU Vessel List if the non-Contracting Party proves that:

(i) the vessel did not take part in the activities described in paragraph 9 which led to the inclusion of the vessel in the NCP–IUU Vessel List; or

(ii) it has taken effective action in response to the activities in question, including prosecution and imposition of sanctions of adequate severity; or

(iii) the vessel has changed ownership including beneficial ownership if known to be distinct from the registered ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(iv) it has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

19. In order to facilitate the work of SCIC and the Commission, the Executive Secretary shall prepare a paper for each CCAMLR annual meeting, summarising and annexing all the information, evidence and comments submitted in respect of each vessel to be considered.

20. The Draft NCP–IUU Vessel List, Provisional NCP–IUU Vessel List, Proposed NCP–IUU Vessel List and the NCP–IUU Vessel List shall contain the following details:

(i) name of vessel and previous names, if any;

(ii) flag of vessel and previous flags, if any;

(iii) owner of vessel and previous owners including beneficial owners, if any;

(iv) operator of vessel and previous operators, if any;

(v) call sign of vessel and previous call signs, if any;

(vi) Lloyds/IMO number;

(vii) photographs of the vessel, where available;

(viii) date vessel was first included on the NCP–IUU Vessel List;

(ix) summary of activities which justify inclusion of the vessel in the List, together with references to all relevant documents informing of and evidencing those activities.

21. On approval of the NCP–IUU Vessel List, the Commission shall request non-Contracting Parties whose vessels appear thereon to take all necessary measures to address these activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, the nullification of the relevant catch documents and denial of further access to the CDS, and to inform the Commission of the measures taken in this respect.

22. Contracting Parties shall take all necessary measures, subject to and in accordance with their applicable laws and regulations and international law, in order that:

(i) the issuance of a licence to vessels on the NCP–IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(ii) fishing vessels, support vessels, refuel vessels, mother-ships and cargo vessels flying their flag do not in any way assist vessels on the NCP–IUU Vessel List by participating in any transhipment or joint fishing operations, supporting or resupplying such vessels;

(iii) vessels on the NCP–IUU Vessel List should be denied access to ports unless for the purpose of enforcement action or for reasons of *force majeure* or for rendering assistance to vessels, or persons on those vessels, in danger or distress. Vessels allowed entry to port are to be inspected in accordance with relevant conservation measures;

(iv) where port access is granted to such vessels:

(a) documentation and other information, including DCDs where relevant are examined, with a view to verifying the area in which the catch was taken; and where the origin cannot be adequately verified, the catch is detained or any landing or transhipment of the catch is refused; and

(b) where possible

i. in the event catch is found to be taken in contravention of CCAMLR conservation measures, catch is confiscated;

ii. all support to such vessels, including non-emergency refuelling, resupplying and repairs is prohibited.

(v) the chartering of vessels on the NCP–IUU Vessel List is prohibited;

(vi) granting of their flag to vessels on the NCP–IUU Vessel List is refused;

(vii) imports, exports and re-exports of *Dissostichus* spp. from vessels on the NCP–IUU Vessel List are prohibited;

(viii) 'Export or Re-export Government Authority Validation' is not certified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel on the NCP–IUU Vessel List;

(ix) importers, transporters and other sectors concerned are encouraged to refrain from dealing with and from transhipping of fish caught by vessels on the NCP–IUU Vessel List;

(x) any appropriate information which is suitably documented is collected and submitted to the Executive Secretary, to be forwarded to Contracting Parties and non-Contracting Parties, entities or fishing entities cooperating with the Commission by participating in the CDS, with the aim of detecting,

controlling and preventing the importation or exportation of, and other trade-related activities relating to, catches from vessels on the NCP–IUU Vessel List intended to circumvent this conservation measure.

23. The Executive Secretary shall place the NCP–IUU Vessel List approved by the Commission on the public section of the CCAMLR Web site. Furthermore, the Executive Secretary shall communicate the NCP–IUU Vessel List to the FAO and appropriate regional fisheries organisations to enhance cooperation between CCAMLR and these organisations for the purposes of preventing, deterring and eliminating IUU fishing.

24. The Executive Secretary shall circulate to non-Contracting Parties cooperating with the Commission by participating in the CDS the NCP–IUU Vessel List, together with the request that, to the extent possible in accordance with their applicable laws and regulations, they do not register vessels that have been placed on the List unless they are removed from the List by the Commission.

25. If Contracting Parties obtain new or changed information for vessels on the NCP–IUU Vessel List in relation to the details in paragraphs 20(i) to (vii), they shall notify the Executive Secretary who shall place a notification on the secure section of the CCAMLR Web site and advise all Contracting Parties and the non-Contracting Party concerned of the notification. If there are no comments on the information within seven (7) days, the Executive Secretary will revise the NCP–IUU Vessel List.

26. Without prejudice to their rights to take proper action consistent with international law, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations against vessels using as the basis for the action the fact that the vessel or vessels have been included in the Draft NCP–IUU Vessel List drawn up by the Executive Secretary, pursuant to paragraph 10.

27. The Chair of the Commission shall request the non-Contracting Parties identified pursuant to paragraph 1 to take all necessary measures to avoid diminishing the effectiveness of CCAMLR conservation measures resulting from their vessels' activities, including if necessary withdrawal of a vessel's registration or fishing licence, nullification of the relevant CDS documents and denial of further access to the CDS, and to advise the Commission of actions taken in that regard.

28. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 2 to cooperate fully with the Commission in order to avoid diminishing the effectiveness of conservation measures adopted by the Commission.

29. The Commission shall review, at subsequent CCAMLR annual meetings, as appropriate, action taken by those non-Contracting Parties to which requests have been made pursuant to paragraph 26, and identify those which have not rectified their activities.

30. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified non-Contracting Parties. In this respect, Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with their obligations as members of the World Trade Organization, that may be necessary to prevent, deter and eliminate the IUU activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise diminish the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

Conservation Measure 10–08 (2006)

Scheme to promote compliance by Contracting Party nationals with CCAMLR conservation measures (Species: all; Area: all; Season: all; Gear: all)

The Commission,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objectives of the Convention,

Concerned that some Flag States do not comply with their obligations regarding jurisdiction and control according to international law in respect of fishing vessels entitled to fly their flag that carry out their activities in the Convention Area, and that as a result these vessels are not under the effective control of such Flag States,

Aware that the lack of effective control facilitates fishing by these vessels in the Convention Area in a manner that undermines the effectiveness of CCAMLR conservation measures, and can lead to illegal, unreported and unregulated (IUU) catches of fish and unacceptable levels of incidental mortality of seabirds,

Concerned that vessels that carry out activities in the Convention Area which do not comply with the CCAMLR conservation measures are benefiting from the support provided by persons subject to the jurisdiction of Contracting Parties, including through participation in transhipment, transport and trade of illegally harvested catches or engagement on board or in the management of these vessels,

Noting that the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing calls on States to take measures to discourage nationals subject to their jurisdiction from supporting and engaging in any activity that undermines the effectiveness of international conservation and management measures,

Recalling that Contracting Parties should cooperate in taking appropriate action to deter any activities which are not consistent with the objective of the Convention,

Resolved to reinforce its integrated administrative and political measures aimed at eliminating IUU fishing in the Convention Area,

hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. Without prejudice to the primacy of the responsibility of the Flag State, the Contracting Parties shall take appropriate measures, subject to and in accordance with their applicable laws and regulations:

(i) to verify if any natural or legal persons subject to their jurisdiction are engaged in the activities described in paragraphs 5(i) to (viii) of Conservation Measure 10–06 and 9(i) to (vi) of Conservation Measure 10–07;

(ii) take appropriate action in response to any verified activities referred to in paragraph 1(i); and

(iii) cooperate for the purpose of implementing the measures and actions referred to in paragraph 1(i). To this end, relevant agencies of Contracting Parties should cooperate to implement CCAMLR conservation measures and Contracting Parties shall seek cooperation by industries within their jurisdiction.

2. To assist with the implementation of this conservation measure, Contracting Parties shall submit reports to the CCAMLR Secretariat and the Contracting Parties and non-Contracting Parties cooperating with CCAMLR for the purpose of implementing the Catch Documentation Scheme for *Dissostichus* spp. on the actions and measures taken in accordance with paragraph 1, in a timely fashion.

3. These provisions shall be applicable from 1 July 2008. Contracting Parties may voluntarily decide to implement these provisions prior to this date.

Conservation Measure 21–01 (2006) [1] [2]

Notification that Members are considering initiating a new fishery

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Recognising that in the past, Antarctic fisheries have been initiated in the Convention Area before sufficient information was available upon which to base management advice,

Noting that in recent years new fisheries have started without adequate information being available to evaluate either the fishery potential or the possible impacts on the target stocks or species dependent on them,

Believing that without prior notification of a new fishery, the Commission is unable to fulfill its function under Article IX,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. A new fishery, for the purposes of this conservation measure, is a fishery on a species using a particular fishing method in a statistical subarea for which:

(i) information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR; or

(ii) catch and effort data have never been submitted to CCAMLR; or

(iii) catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

2. In addition to those fisheries identified according to paragraph 1, the use of fishing methods in high-seas areas of the Convention Area as specified in Annex 21–01/A will constitute new fisheries and will require approval of the Commission for specific areas before proceeding.

3. A Member intending to develop a new fishery shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, where the matter shall be considered. The Member shall not initiate a new fishery pending the process specified in paragraphs 6 and 7 below.

4. The notification shall be accompanied by as much of the following information as the Member is able to provide:

(i) the nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;

(ii) biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(iii) details of dependent and associated species and the likelihood of them being affected by the proposed fishery;

(iv) information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield;

(v) if the proposed fishery will be undertaken using bottom trawl gear, information on the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities.

5. New fisheries shall be open only to those vessels that are equipped and configured so that they can comply with all relevant conservation measures. A vessel with a confirmed involvement in illegal, unreported or unregulated fishing in respect of Conservation Measures 10–06 and 10–07 shall not be permitted to participate in new fisheries.

6. The information provided in accordance with paragraph 4, together with any other relevant information, shall be considered by the Scientific Committee, which shall then advise the Commission.

7. After its review of the information on the proposed new fishery, taking full account of the recommendations and the advice of the Scientific Committee, the Commission may then take such action as it deems necessary.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Annex 21–01/A

Additional Fishing Methods

Bottom trawling in high-seas areas of the Convention Area.

Conservation Measure 21–02 (2006) [1] [2]

Exploratory fisheries

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Recognising that in the past, some Antarctic fisheries had been initiated and subsequently expanded in the Convention Area before sufficient information was available upon which to base management advice,

Agreeing that exploratory fishing should not be allowed to expand faster than the acquisition of information necessary to ensure that the fishery can and will be conducted in accordance with the principles set forth in Article II,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. For the purposes of this conservation measure, exploratory fisheries are defined as follows:

(i) an exploratory fishery shall be defined as a fishery that was previously classified as a 'new fishery', as defined by Conservation Measure 21–01;

(ii) an exploratory fishery shall continue to be classified as such until sufficient information is available:

(a) to evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield;

(b) to review the fishery's potential impacts on dependent and related species;

(c) to allow the Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels, as well as effort levels and fishing gear, where appropriate.

2. To ensure that adequate information is made available to the Scientific Committee for evaluation, during the period when a fishery is classified as exploratory, the Scientific Committee shall develop (and update annually as appropriate) a Data Collection Plan, which should include research proposals, as appropriate. This shall identify the data needed and describe any operational research actions necessary to obtain the relevant data from the exploratory fishery to enable an assessment of the stock to be made.

3. The Data Collection Plan shall include, where appropriate:

(i) a description of the catch, effort, and related biological, ecological, and environmental data required to undertake the evaluations described in paragraph 1(ii), and the date by which such data are to be reported annually to CCAMLR;

(ii) a plan for directing fishing effort during the exploratory phase to permit the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, dependent and related populations and the likelihood of adverse impacts;

(iii) where appropriate, a plan for the acquisition of any other research data by fishing vessels, including activities that may require the cooperative activities of

scientific observers and the vessel, as may be required for the Scientific Committee to evaluate the fishery potential and the ecological relationships among harvested, dependent and related populations and the likelihood of adverse impacts;

(iv) an evaluation of the time-scales involved in determining the responses of harvested, dependent and related populations to fishing activities.

4. The Commission shall annually determine a precautionary catch limit at a level not substantially above that necessary to obtain the information specified in the Data Collection Plan and required to undertake the evaluations described in paragraph 1(ii).

5. Any Member proposing to participate in an exploratory fishery shall:

(i) notify its intention to the Commission not less than three months in advance of the next regular meeting of the Commission. This notification shall include the information prescribed in paragraph 4 of Conservation Measure 10–02 in respect of vessels proposing to participate in the fishery, with the exception that the notification shall not be required to specify the information referred to in subparagraph 4(ii) of Conservation Measure 10–02. Members shall, to the extent practicable, also provide in their notification the additional information detailed in paragraph 5 of Conservation Measure 10–02 in respect to each fishing vessel notified. Members are not hereby exempted from their obligations under Conservation Measure 10–02 to submit any necessary updates to vessel and licence details within the deadline established therein as of issuance of the licence to the vessel concerned;

(ii) prepare and submit to CCAMLR by a specified date a Fishery Operations Plan for the fishing season, for review by the Scientific Committee and the Commission. The Fishery Operations Plan shall include as much of the following information as the Member is able to provide, so as to assist the Scientific Committee in its preparation of the Data Collection Plan:

(a) the nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(b) biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data, and information on stock identity;

(c) details of dependent and related species and the likelihood of their being affected by the proposed fishery;

(d) information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield;

(e) if the proposed fishery will be undertaken using bottom trawl gear, information on the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities.

(iii) provide a commitment, in its proposal, to implement any Data Collection Plan developed by the Scientific Committee for the fishery.

6. On the basis of the information submitted in accordance with paragraph 5, and taking into account the advice and evaluation provided by the Scientific Committee and the Standing Committee on Implementation and Compliance (SCIC), the Commission shall annually consider adoption of relevant conservation measures for each exploratory fishery.

7. The Commission shall not consider a notification by a Member unless the information required by paragraph 5 has been submitted by the due date.

8. Notwithstanding paragraph 7, Members shall be entitled under Conservation Measure 10–02 to authorise participation in an exploratory fishery by a vessel other than that identified by the Commission in accordance with paragraph 5 if the notified vessel is prevented from participation due to legitimate operational or *force majeure* reasons. In such circumstances the Member concerned shall immediately inform the Secretariat thereof providing:

(i) full details of the intended replacement vessel(s) as prescribed in subparagraph 5(i);

(ii) a comprehensive account of the reasons justifying the replacement and any relevant supporting evidence or references. The Secretariat shall immediately circulate this information to all Members.

9. Members whose vessels participate in exploratory fisheries in accordance with paragraphs 5 and/or 8 shall:

(i) ensure that their vessels are equipped and configured so that they can comply with all relevant conservation measures;

(ii) ensure that each vessel carries a CCAMLR-designated scientific observer to collect data in accordance with the Data Collection Plan, and to assist in collecting biological and other relevant data;

(iii) annually (by the specified date) submit to CCAMLR the data specified by the Data Collection Plan;

(iv) be prohibited from continuing participation in the relevant exploratory fishing if the data specified in the Data Collection Plan have not been submitted to CCAMLR for the most recent season in which fishing occurred, until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data.

10. A vessel on either of the IUU Vessel Lists established under Conservation Measures 10–06 and 10–07 shall not be permitted to participate in exploratory fisheries.

11. Notifications for exploratory fisheries pursuant to the provisions above shall be subject to an administrative cost-recovery scheme and shall therefore be accompanied by a payment per vessel, the amount and refundable component of which shall be decided by the Commission, as well as the conditions and modalities according to which such payment shall be made.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 21–03 (2006) [1] [2]

Notifications of intent to participate in a krill fishery

(Species: krill; Area: all; Season: all; Gear: trawl)

All Contracting Parties intending to fish for krill in the Convention Area shall notify the Secretariat of their intent not less than four (4) months in advance of the regular annual meeting of the Commission, immediately prior to the season in which they intend to fish, using the pro forma in Annex 21–03/A.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

ANNEX 21-03/A

NOTIFICATION OF INTENT TO PARTICIPATE IN A KRILL FISHERY

Contracting Party: _____

Fishing season: _____

Name of vessel(s) and fishing technique: _____

Expected level of catch (tonnes): _____

Months during which fishing will proceed: _____

Subareas and/or divisions where fishing will take place: _____

Products to be derived from catch[1]: _____ %

_____ %

_____ %

_____ %

[1] Information to be provided to the extent possible.

Conservation Measure 22–01 (1986)

Regulation on mesh size measurement (this conservation measure supplements Conservation Measure 22–02)

(Species: all; Area: all; Season: all; Gear: trawl)

Article 1

Description of Gauges

1. Gauges to be used for determining mesh sizes shall be 2 mm thick, flat, of durable material and capable of retaining their shape. They shall have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They shall have a hole at the narrowest extremity.

2. Each gauge shall be inscribed on its face with the width in millimeters both on the parallelπsided section, if any, and on the tapering section. In the case of the latter the width shall be inscribed every 1 mm interval and the indication of the width shall appear at regular intervals.

Article 2

Use of the Gauge

1. The net shall be stretched in the direction of the long diagonal of the meshes.

2. A gauge as described in Article 1 shall be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

3. The gauge shall be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

Article 3

Selection of Meshes to be Measured

1. Meshes to be measured shall form a series of 20 consecutive meshes chosen in the direction of the long axis of the net.

2. Meshes less than 50 cm from lacings, ropes or codline shall not be measured. This distance shall be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. Nor shall any mesh be measured which has been mended or broken or has attachments to the net fixed at that mesh.

3. By way of derogation from paragraph 1, the meshes to be measured need not be consecutive if the application of paragraph 2 prevents it.

4. Nets shall be measured only when wet and unfrozen.

Article 4

Measurement of Each Mesh

The size of each mesh shall be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with Article 2.

Article 5

Determination of the Mesh Size of the Net

1. The mesh size of the net shall be the arithmetical mean in millimetres of the measurements of the total number of meshes selected and measured as provided for in Articles 3 and 4, the arithmetical mean being rounded up to the next millimetre.

2. The total number of meshes to be measured is provided for in Article 6.

Article 6

Sequence of Inspection Procedure

1. The inspector shall measure one series of 20 meshes, selected in accordance with Article 3, inserting the gauge manually without using a weight or dynamometer. The mesh size of the net shall then be determined in accordance with Article 5.

If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with Article 3 shall be measured. The mesh size shall then be recalculated in accordance with Article 5, taking into account the 60 meshes already measured. Without prejudice to paragraph 2, this shall be the mesh size of the net.

2. If the captain of the vessel contests the mesh size determined in accordance with paragraph 1, such measurement will not be considered for the determination of the mesh size and the net shall be remeasured.

A weight or dynamometer attached to the gauge shall be used for remeasurement.

The choice of weight or dynamometer shall be at the discretion of the inspector.

The weight shall be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may

either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

The accuracy of the weight or dynamometer shall be certified by the appropriate national authority.

For nets of a mesh size of 35 mm or less as determined in accordance with paragraph 1, a force of 19.61 newtons (equivalent to a mass of 2 kilograms) shall be applied and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kilograms).

For the purposes of determining the mesh size in accordance with Article 5 when using a weight or dynamometer, one series of 20 meshes only shall be measured.

Conservation Measure 22–02 (1984)

Mesh size (as amended in accordance with Conservation Measure 22–03)
(Species: toothfish, target demersal; Area: all; Season: all; Gear: trawl)

1. The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishery for:

Notothenia rossii, Dissostichus eleginoides: 120 mm.

Gobionotothen gibberifrons, Notothenia kempi, Lepidonotothen squamifrons: 80 mm.

2. It is prohibited to use any means or device which would obstruct or diminish the size of the meshes.

3. This conservation measure does not apply to fishing conducted for scientific research purposes.

4. This measure will apply as of 1 September 1985.

Conservation Measure 22–03 (1990) [1]

Mesh size for *Champsocephalus gunnari*
(Species: icefish; Area: all; Season: all; Gear: trawl)

1. The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than 90 mm is prohibited for any directed fishery for *Champsocephalus gunnari.*

2. The mesh size specified above is defined in accordance with the regulations on mesh size measurement, Conservation Measure 22–01 (1986).

3. It is prohibited to use any means or device which would obstruct or diminish the size of the meshes.

4. This conservation measure does not apply to fishing conducted for scientific research purposes.

5. This measure will apply as of 1 November 1991.

6. Conservation Measure 22–02 is amended accordingly.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 22–04 (2006)

Interim prohibition of deep-sea gillnetting
(Species: all; Area: all; Season: all; Gear: gillnet)

The Commission,

Concerned that there have been sightings of illegal, unreported and unregulated (IUU) vessels fishing in the Convention Area using gillnetting,

Also concerned that deep-sea gillnetting in the Convention Area and the associated ghost-fishing by lost or discarded nets has serious detrimental effects on the marine environment and many species of marine living resources,

Aware of the large quantities of non-target species, especially sharks and rays, that are killed by deep-sea gillnetting, and greatly concerned by the impacts on their populations,

Desiring to clearly indicate to the international community that the Commission considers deep-sea gillnetting to be a potentially destructive fishing method, and a practice which may undermine the ability of the Commission to achieve its conservation objective,

Noting that any application in respect of scientific research is subject to the requirements of Conservation Measure 24–01,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. The use of gillnets [1] in the Convention Area, for purposes other than scientific research, is prohibited until such time as the Scientific Committee has investigated and reported on the potential impacts of this gear and the Commission has agreed on the basis of advice from the Scientific Committee that such a method may be used in the Convention Area.

2. The use of gillnets for scientific research in waters shallower than 100 metres shall be permitted subject to the requirements of Conservation Measure 24–01.

3. Proposals for the use of gillnets for scientific research in waters deeper than 100 metres shall be notified in advance to the Scientific Committee and be approved by the Commission before such research can commence.

4. Any vessel seeking to transit the Convention Area carrying gillnets must give advance notice of its intent, including the expected dates of its passage through the Convention Area, to the Secretariat. Any vessel in possession of gillnets within the Convention Area which has not given such advance notice shall be in breach of this conservation measure.

[1] Gillnets are strings of single, double or triple netting walls, vertical, near the surface, in midwater or on the bottom, in which fish will gill, entangle or enmesh. Gillnets have floats on the upper line (headrope) and, in general, weights on the ground-line (footrope). Gillnets consist of single or, less commonly, double or triple netting (known as 'trammel net') mounted together on the same frame ropes. Several types of nets may be combined in one gear (for example, trammel net combined with gillnet). These nets can be used either alone or, as is more usual, in large numbers placed in line ('fleets' of nets). The gear can be set, anchored to the bottom or left drifting, free or connected with the vessel.

Conservation Measure 22–05 (2006)

Interim restrictions on the use of bottom trawling gear in high-seas areas of the Convention Area for the fishing seasons 2006/07 and 2007/08
(Species: all; Area: high seas; Season: 2006/07, 2007/08; Gear: bottom trawl)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. The use of bottom trawling gear in the high-seas areas of the Convention Area is restricted to areas for which the Commission has conservation measures in force for bottom trawling gear.

2. In 2007, the Scientific Committee shall review the use of bottom trawling gear in high-seas areas of the Convention Area, including with respect to relevant criteria for determining what constitutes significant harm to benthos and benthic communities.

3. This conservation measure does not apply to the use of bottom trawling gear in conducting scientific research in the Convention Area.

4. This conservation measure shall be reviewed by the Commission in 2007 based on the best scientific evidence available.

Conservation Measure 23–01 (2005)

Five-day Catch and Effort Reporting System
(Species: all; Area: various; Season: all; Gear: various)

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from

each of its vessels its total catch of all species, including by-catch species, and total days and hours fished for that period and shall, by facsimile or e-mail, transmit the aggregated catch and days and hours fished for its vessels. The catch and effort data shall reach the Executive Secretary not later than two (2) working days after the end of the reporting period. In the case of longline fisheries, the number of hooks shall also be reported. In the case of pot fisheries, the number of pots shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken. A Contracting Party may authorise each of its vessels to report directly to the Secretariat.

4. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

5. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. In the case of exploratory fisheries, the Executive Secretary shall also notify the total aggregate catch for the season to date in each small-scale research unit (SSRU) together with an estimate of the date upon which the total allowable catch is likely to be reached in each SSRU for that season. Estimates shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

6. At the end of every six reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the six most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

7. If the estimated date of completion of the total allowable catch is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later. In the case of exploratory fisheries, if the estimated date of completion of the catch in any SSRU is within five days of the day on which the Secretariat received the report of catches, the Executive Secretary shall additionally inform all Contracting Parties, and their relevant fishing vessels if so authorised, that fishing in that SSRU will be prohibited from that calculated day, or on the day on which the report was received, whichever is the later.

8. Should a Contracting Party, or where a vessel is authorised to report directly to the Secretariat, the vessel, fail to transmit a report to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two five-day periods, or, in the case of exploratory fisheries, a further one five-day period, those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to the vessel which has failed to supply the data as required and the Contracting Party concerned shall require the vessel to cease fishing. If the Executive Secretary is notified by the Contracting Party that the failure of the vessel to report is due to technical difficulties, the vessel may resume fishing once the report or explanation concerning the failure has been submitted.

Conservation Measure 23–02 (1993)

Ten-day Catch and Effort Reporting System
(Species: all; Area: various; Season: all; Gear: various)

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 day 20, day 21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, and C.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period. In the case of longline fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken.

4. The retained catch of all species and by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B and C) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the TAC is within ten days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

Conservation Measure 23–03 (1991)

Monthly Catch and Effort Reporting System
(Species: all; Area: various; Season: all; Gear: various)

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the reporting period shall be defined as one calendar month.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable

catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. In the case of finfish, if the estimated date of completion of the TAC is within one reporting period of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

Conservation Measure 23–04 (2000)[1 2]

Monthly Fine-Scale Catch and Effort Data Reporting System for Trawl, Longline and Pot Fisheries
(Species: all except krill; Area: all; Season: all; Gear: all)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01, where appropriate.

This conservation measure is invoked by the conservation measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this conservation measure shall be made in the conservation measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1, longline fisheries Form C2, or pot fisheries Form C5). It shall transmit those data in the specified format to the Executive Secretary not later than the end of the following month.

3. The catch of all target and by-catch species must be reported by species.

4. The numbers of seabirds and marine mammals of each species caught and released or killed must be reported.

5. Should a Contracting Party fail to transmit the fine-scale catch and effort data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 23–05 (2000)[1 2]

Monthly Fine-Scale Biological Data Reporting System for Trawl, Longline and Pot Fisheries
(Species: all except krill; Area: all; Season: all; Gear: all)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01, where appropriate.

This conservation measure is invoked by the conservation measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this conservation measure shall be made in the conservation measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels representative samples of length composition measurements of the target species and by-catch species from the fishery (Form B2). It shall transmit those data in the specified form to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this conservation measure:

(i) length measurements of fish should be of total length to the nearest centimetre below;

(ii) a representative sample of length composition should be taken from each single fine-scale grid rectangle (0.5° latitude by 1° longitude) in which fishing occurs. In the event that the vessel moves from one fine-scale grid rectangle to another during the course of a month, then a separate length composition should be submitted for each fine-scale grid rectangle.

4. Should a Contracting Party fail to transmit the fine-scale length composition data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

[1]Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 23–06 (2005)

Data Reporting System for Krill Fisheries
(Species: krill; Area: all; Season: all; Gear: all)

1. This conservation measure is invoked by the conservation measures to which it is attached.

2. Catches shall be reported in accordance with the monthly catch and effort reporting system set out in Conservation Measure 23–03 according to the statistical areas, subareas, divisions or any other area or unit specified with catch limits in Conservation Measures 51–01, 51–02 and 51–03.

3. At the end of each fishing season each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1). It shall transmit those data in the specified format to the Executive Secretary not later than 1 April of the following year.

Conservation Measure 24–01 (2005)[1 2]

The application of conservation measures to scientific research
(Species: all; Area: all; Season: all; Gear: all)

This conservation measure governs the application of conservation measures to scientific research and is adopted in accordance with Article IX of the Convention.

1. General application:

(a) Catches taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken unless the catch limit in an area[3] is set at zero.

(b) In the event of research being undertaken in an area[3] with a zero catch limit, then the catches adopted under paragraphs 2 or 3 below shall be considered to be the catch limit for the season in that area. When such an area sits within a group of areas to which an overall catch limit applies, that overall catch limit shall not be exceeded including any catch taken for research purposes.

2. Application to Members taking less than 50 tonnes of finfish in a season including no more than the amounts specified for finfish taxa in Annex 24–01/B and less than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use a vessel or vessels for research purposes when the estimated seasonal catch is as above shall notify the Secretariat of the Commission which in turn will notify all Members immediately, according to the format provided in Annex 24–01/A.

(b) Vessels to which the provisions of paragraph 2(a) above apply, shall be exempt from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those specified in paragraph 4 below.

3. Application to Members taking more than 50 tonnes of finfish or more than the amounts specified for finfish taxa in Annex 24–01/B or more than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use any type of vessel or vessels to conduct fishing for research purposes when the estimated seasonal catch is as above, shall notify the Commission and provide the opportunity for other Members to review and comment on its research plan. The plan shall be provided to the Secretariat for distribution to Members at least six months in advance of the planned starting date for the research. In the event of any request for a review of such plan being lodged within two months of its circulation, the Executive Secretary shall notify all Members and submit the plan to the Scientific Committee for review. Based on the submitted research plan and any advice provided by the appropriate working group, the Scientific Committee will provide advice to the Commission where the review process will be concluded. Until the review process is complete the planned fishing for research purposes shall not proceed.

(b) Research plans shall be reported in accordance with the standardised guidelines and formats adopted by the Scientific Committee, given in Annex 24–01/A.

4. Reporting requirements for these research activities are:

(a) The CCAMLR within-season five-day reporting system shall apply.

(b) All research catches shall be reported to CCAMLR as part of the annual STATLANT returns.

(c) A summary of the results of any research subject to the above provisions shall be provided to the Secretariat within 180 days of the completion of the research fishing. A full report shall be provided within 12 months.

(d) Catch, effort and biological data resulting from research fishing should be reported to the Secretariat according to the haul-by-haul reporting format for research vessels (C4).

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Any management area including subarea, division or SSRU, whichever is designated as a zero catch limit.

BILLING CODE 3510–22–P

ANNEX 24-01/A

FORMATS FOR NOTIFICATION OF RESEARCH VESSEL ACTIVITY

Format 1

NOTIFICATION OF RESEARCH VESSEL ACTIVITY IN ACCORDANCE WITH PARAGRAPH 2 OF CONSERVATION MEASURE 24-01

Name and registration number of vessel _____

Division and subarea in which research is to be carried out _____

Estimated dates of entering and leaving CCAMLR Convention Area_____

Purpose of research_____

_____

Fishing equipment likely to be used:

Bottom trawl_____

Midwater trawl _____

Longline _____

Crab pots_____

Other fishing gear (specify) _____

Format 2

FORMAT FOR REPORTING PLANS FOR FINFISH SURVEYS IN ACCORDANCE WITH PARAGRAPH 3 OF CONSERVATION MEASURE 24-01

CCAMLR MEMBER _____

SURVEY DETAILS

A statement of the planned research objectives _____

_____

_____

Survey Area/Subarea/Division _____

Geographical Boundaries: Latitude from _____ to _____

Longitude from _____ to _____

Is a map of area surveyed (preferably including bathymetry and positions of sampling stations/hauls) appended to the format ? _____

Proposed dates of survey: from _____ / _____ / _____ (Y/M/D)

to _____ / _____ / _____ (Y/M/D)

Name(s) and address of the chief scientist(s) responsible

for planning and coordinating the research _____

_____

_____

Number of scientists _____ and crew _____ to be aboard the vessel.

Is there opportunity for inviting scientists from other Members? _____

If so, indicate a number of such scientists _____

DESCRIPTION OF VESSEL

Name of vessel _____

Name and address of vessel owner _____

_____

Vessel type (dedicated research or chartered commercial vessel) _____

Port of registration _____ Registration number _____

Radio call sign _____ Overall length _____ (m)

Tonnage _____

Equipment used for determining position _____

Fishing capacity (limited to scientific sampling

activities only or commercial capacity)_____ (tonnes/day)

Fish processing capacity (if vessel type is commercial)_____ (tonnes/day)

Fish storage capacity (if vessel type is commercial) _____ (m^3)

DESCRIPTION OF FISHING GEAR TO BE USED

Trawl type (i.e. bottom, midwater) _____

Mesh shape (i.e. diamond, square) and

mesh size in codend (mm) _____

Longline _____

Other sampling gear as plankton nets, CTD probes,

water samplers, etc. (specify) _____

DESCRIPTION OF ACOUSTIC GEAR TO BE USED

Type _____ Frequency _____

SURVEY DESIGN AND METHODS OF DATA ANALYSES

Survey design (random, semi-random) _____

Target species _____

Stratification (if any) according to:

Depth zones (list) _____

Fish density (list) _____

Other (specify) _____

Duration of standard sampling stations/hauls (preferably 30 min) _____ (min)

Proposed number of hauls _____

Proposed sample size (total): _____ (number) _____ (kg)

Proposed methods of survey data analyses

(i.e. swept area method, acoustic survey) _____

DATA TO BE COLLECTED

Haul-by-haul catch and effort data in accordance with CCAMLR Form C4

for reporting results of fishing for research purposes: _____

_____

Fine-scale biological data in accordance with CCAMLR Forms B1, B2 and B3:

_____

_____

Other data (as applicable)

_____

ANNEX 24-01/B

TAXA-SPECIFIC SCHEDULE FOR NOTIFICATION OF RESEARCH VESSEL ACTIVITY

	Taxon	Expected Catch
(a)	Thresholds for finfish taxa	
	Dissostichus spp.	10 tonnes
	Champsocephalus gunnari	50 tonnes
(b)	Non-finfish taxa for which a catch threshold of 0.1% of the catch limit for a given area would apply	
	Krill	
	Squid	
	Crabs	

BILLING CODE 3510–22–C

Conservation measure 24–02 (2005)

Longline weighting for seabird conservation

(Species: seabirds; Area: selected; Season: all; Gear: longline)

In respect of fisheries in Statistical Subareas 48.6, 88.1 and 88.2 and Statistical Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2, paragraph 4 of Conservation Measure 25–02 shall not apply only where a vessel can demonstrate its ability to fully comply with one of the following protocols.

Protocol A (for vessels monitoring longline sink rate with Time-Depth Recorders (TDRs) and using longlines to which weights are manually attached):

A1. Prior to entry into force of the licence for this fishery and once per fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) set a minimum of two longlines with a minimum of four TDRs on the middle one-third of each longline, where:

(a) for vessels using the auto longline system, each longline shall be at least 6,000 m in length;

(b) for vessels using the Spanish longline system, each longline shall be at least 16,000 m in length;

(c) for vessels using the Spanish longline system, with longlines less than 16,000 m in length, each longline shall be of the maximum length to be used by the vessel in the Convention Area;

(d) for vessels using a longline system other than an autoline or Spanish longline system, each longline shall be of the maximum length to be used by the vessel in the Convention Area.

(ii) randomise TDR placement on the longline, noting that all tests should be applied midway between weights;

(iii) calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) the sink rate shall be measured as an average of the time taken for the longline to sink from the surface (0 m) to 15 m;

(b) this sink rate shall be at a minimum rate of 0.3 m/s;

(iv) if the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.3 m/s are recorded;

(v) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

A2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) attempt to conduct a TDR test on one longline set every twenty-four hour period;

(ii) every seven days place at least four TDRs on a single longline to determine any sink rate variation along the longline;

(iii) randomise TDR placement on the longline, noting that all tests should be applied halfway between weights;

(iv) calculate an individual longline sink rate for each TDR when returned to the vessel;

(v) measure the longline sink rate as an average of the time taken for the longline to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) ensure that all longlines are weighted to achieve a minimum longline sink rate of 0.3 m/s at all times whilst operating under this exemption;

(ii) report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format [1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

Protocol B (for vessels monitoring longline sink rate with bottle tests and using longlines to which weights are manually attached):

B1. Prior to entry into force of the licence for this fishery and once per fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) set a minimum of two longlines with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of each longline, where:

(a) for vessels using the auto longline system, each longline shall be at least 6,000 m in length;

(b) for vessels using the Spanish longline system, each longline shall be at least 16,000 m in length;

(c) for vessels using the Spanish longline system, with longlines less than 16,000 m in length, each longline shall be of the maximum length to be used by the vessel in the Convention Area;

(d) for vessels using a longline system other than an autoline or Spanish longline system, each longline shall be of the maximum length to be used by the vessel in the Convention Area;

(ii) randomise bottle test placement on the longline, noting that all tests should be applied midway between weights;

(iii) calculate an individual sink rate for each bottle test at the time of the test, where:

(a) the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(b) this sink rate shall be at a minimum rate of 0.3 m/s;

(iv) if the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.3 m/s are recorded;

(v) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) attempt to conduct a bottle test on one longline set every twenty-four hour period;

(ii) every seven days conduct at least four bottle tests on a single longline to determine any sink rate variation along the longline;

(iii) randomise bottle test placement on the longline, noting that all tests should be applied halfway between weights;

(iv) calculate an individual longline sink rate for each bottle test at the time of the test;

(v) measure the longline sink rate as the time taken for the longline to sink from the surface (0 m) to 10 m.

B3. The vessel shall:

(i) ensure that all longlines are weighted to achieve a minimum longline sink rate of 0.3 m/s at all times whilst operating under this exemption;

(ii) report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format [1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 500–1,000 ml plastic bottle [2] with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed in low light conditions and at night.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline,[3] midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t2 in seconds.[4] The result of the test is calculated as follows:

Longline sink rate = $10 / (t_2 - t_1)$.

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

Protocol C (for vessels monitoring longline sink rate with either (TDR) or bottle tests, and using internally weighted longlines with integrated weight of at least 50 g/m and designed to sink instantly with a linear profile at greater than 0.2 m/s with no external weights attached):

C1. Prior to entry into force of the licence for this fishery and once per fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) set a minimum of two longlines with either a minimum of four TDRs, or a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of each longline, where:

(a) for vessels using the auto longline system, each longline shall be at least 6,000 m in length;

(b) for vessels using the Spanish longline system, each longline shall be at least 16,000 m in length;

(c) for vessels using the Spanish longline system, with longlines less than 16,000 m in length, each longline shall be of the maximum length to be used by the vessel in the Convention Area;

(d) for vessels using a longline system other than an autoline or Spanish longline system, each longline shall be of the maximum length to be used by the vessel in the Convention Area;

(ii) randomise TDR or bottle test placement on the longline;

(iii) calculate an individual sink rate for each TDR when returned to the vessel, or for each bottle test at the time of the test, where:

(a) the sink rate shall be measured as an average of the time taken for the longline to sink from the surface (0 m) to 15 m for TDRs and the time taken for the longline to sink from the surface (0 m) to 10 m for bottle tests;

(b) this sink rate shall be at a minimum rate of 0.2 m/s;

(iv) if the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.2 m/s are recorded;

(v) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

C2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) attempt to conduct a TDR or bottle test on one longline set every twenty-four hour period;

(ii) every seven days conduct at least four TDR or bottle tests on a single longline to determine any sink rate variation along the longline;

(iii) randomise TDR or bottle test placement on the longline;

(iv) calculate an individual longline sink rate for each TDR when returned to the vessel or each bottle test at the time of the test;

(v) measure the longline sink rate for bottle tests as the time taken for the longline to sink from the surface (0 m) to 10 m, or for TDRs the average of the time taken for the longline to sink from the surface (0 m) to 15 m.

C3. The vessel shall:

(i) ensure that all longlines are set so as to achieve a minimum longline sink rate of 0.2 m/s at all times whilst operating under this exemption;

(ii) report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format [1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

[1] Included in the scientific observer electronic logbook.

[2] A plastic water bottle that has a 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[3] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[4] Binoculars will make this process easier to view, especially in foul weather.

Conservation Measure 25–02 (2005) [1 2]

Minimisation of the incidental mortality of seabirds in the course of longline fishing or longline fishing research in the Convention Area

(Species: seabirds; Area: all; Season: all; Gear: longline)

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimising their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Recognising that in certain subareas and divisions of the Convention Area there is also a high risk that seabirds will be caught during line hauling,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that hooklines [3] sink beyond the reach of seabirds as soon as possible after they are put in the water.

2. Vessels using autoline systems should add weights to the hookline or use integrated weight hooklines while deploying longlines. Integrated weight (IW) longlines of a minimum of 50 g/m or attachment to non-IW longlines of 5 kg weights at 50 to 60 m intervals are recommended.

3. Vessels using the Spanish method of longline fishing should release weights before line tension occurs; weights of at least 8.5 kg mass shall be used, spaced at intervals of no more than 40 m, or weights of at least 6 kg mass shall be used, spaced at intervals of no more than 20 m.

4. Longlines shall be set at night only (i.e., during the hours of darkness between the times of nautical twilight [4 5]. During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

5. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided. Any such discharge shall take place only on the opposite side of the vessel to that where longlines are hauled. For vessels or fisheries where there is not a requirement to retain offal on board the vessel, a system shall be implemented to remove fish hooks from offal and fish heads prior to discharge.

6. Vessels which are so configured that they lack on-board processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel to that where longlines are hauled, shall not be authorised to fish in the Convention Area.

7. A streamer line shall be deployed during longline setting to deter birds from approaching the hookline. Specifications of the streamer line and its method of deployment are given in the appendix to this measure.

8. A device designed to discourage birds from accessing baits during the haul of longlines shall be employed in those areas defined by CCAMLR as average-to-high or high (Level of Risk 4 or 5) in terms of risk of seabird by-catch. These areas are currently Statistical Subareas 48.3, 58.6 and 58.7 and Statistical Divisions 58.5.1 and 58.5.2.

9. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardising the life of the bird concerned.

10. Other variations in the design of mitigation measures may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this conservation measure are complied with.[6] Full proposals for any such testing must be notified to the Working Group on Fish Stock Assessment (WG–FSA) in advance of the fishing season in which the trials are proposed to be conducted.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Hookline is defined as the groundline or mainline to which the baited hooks are attached by snoods.

[4] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. A copy of the algorithm for calculating these times is available from the CCAMLR Secretariat. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[5] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[6] The mitigation measures under test should be constructed and operated taking full account of the principles set out in WG–FSA–03/22 (the published version of which is available from the CCAMLR Secretariat and Web site); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 21–02.

Appendix to Conservation Measure 25–02

1. The aerial extent of the streamer line, which is the part of the line supporting the streamers, is the effective seabird deterrent component of a streamer line. Vessels are encouraged to optimise the aerial extent and ensure that it protects the hookline as far astern of the vessel as possible, even in crosswinds.

2. The streamer line shall be attached to the vessel such that it is suspended from a point a minimum of 7 m above the water at the stern on the windward side of the point where the hookline enters the water.

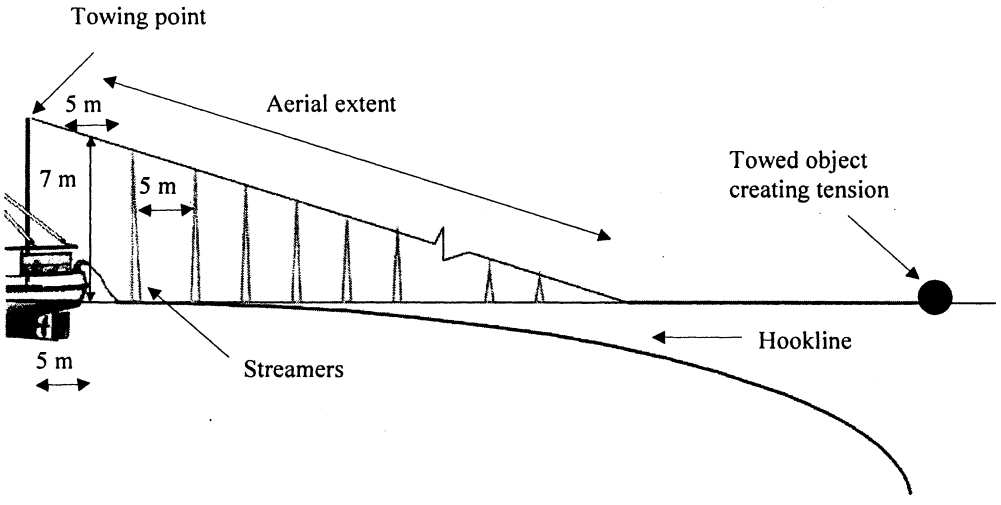
3. The streamer line shall be a minimum of 150 m in length and include an object towed at the seaward end to create tension to maximise aerial coverage. The object towed should be maintained directly behind the attachment point to the vessel such that in crosswinds the aerial extent of the streamer line is over the hookline.

4. Branched streamers, each comprising two strands of a minimum of 3 mm diameter brightly coloured plastic tubing[7] or cord, shall be attached no more than 5 m apart commencing 5 m from the point of attachment of the streamer line to the vessel and thereafter along the aerial extent of the line. Streamer length shall range between minimums of 6.5 m from the stern to 1 m for the seaward end. When a streamer line is fully deployed, the branched streamers should reach the sea surface in the absence of wind and swell. Swivels or a similar device should be placed in the streamer line in such a way as to prevent streamers being twisted around the streamer line. Each branched streamer may also have a swivel or other device at its attachment point to the streamer line to prevent fouling of individual streamers.

5. Vessels are encouraged to deploy a second streamer line such that streamer lines are towed from the point of attachment each side of the hookline. The leeward streamer line should be of similar specifications (in order to avoid entanglement the leeward streamer line may need to be shorter) and deployed from the leeward side of the hookline.

[7] Plastic tubing should be of a type that is manufactured to be protected from ultraviolet radiation.

Streamer Line



Conservation Measure 25–03 (2003) [1]

Minimisation of the incidental mortality of seabirds and marine mammals in the course of trawl fishing in the Convention Area

(Species: seabirds, marine mammals; Area: all; Season: all; Gear: trawl)

The Commission,

Noting the need to reduce the incidental mortality of or injury to seabirds and marine mammals from fishing operations,

Adopts the following measures to reduce the incidental mortality of or injury to seabirds and marine mammals during trawl fishing.

1. The use of net monitor cables on vessels in the CCAMLR Convention Area is prohibited.

2. Vessels operating within the Convention Area should at all times arrange the location and level of lighting so as to minimise illumination directed out from the vessel, consistent with the safe operation of the vessel.

3. The discharge of offal shall be prohibited during the shooting and hauling of trawl gear.

4. Nets should be cleaned prior to shooting to remove items that might attract birds.

5. Vessels should adopt shooting and hauling procedures that minimise the time that the net is lying on the surface of the water with the meshes slack. Net maintenance should, to the extent possible, not be carried out with the net in the water.

6. Vessels should be encouraged to develop gear configurations that will minimise the chance of birds encountering the parts of the net to which they are most vulnerable. This could include increasing the weighting or decreasing the buoyancy of the net so that it sinks faster, or placing coloured streamers or other devices over particular areas of the net where the mesh sizes create a particular danger to birds.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 26–01 (2006) [1] [2]

General environmental protection during fishing

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Concerned that certain activities associated with fishing may affect the Antarctic marine environment and that these activities have played a notable role in CCAMLR's efforts to minimise incidental mortality of non-target species such as seabirds and seals,

Noting that previous CCAMLR recommendations, and the provisions of the MARPOL 73/78 Convention and its Annexes, prohibit the disposal of all plastics at sea, in the CCAMLR Convention Area,

Noting various provisions of the Protocol on Environmental Protection to the Antarctic Treaty in particular its Annexes as well as related Recommendations and Measures of the Antarctic Treaty Consultative Meetings,

Recollecting that for many years advice from the Scientific Committee has indicated that significant numbers of Antarctic fur seals have been entangled and killed in plastic packaging bands in the Convention Area,

Noting the recommendations of CCAMLR and the provisions of the MARPOL Convention and its Annexes which prohibit the jettisoning of all plastics at sea and that entanglement of fur seals is still continuing,

Recognising that the bait boxes used on fishing vessels in particular and other packages in general need not be secured by plastic packaging bands because suitable alternatives exist,

Adopts the following Conservation Measure to minimise possible effects on the marine environment arising from fishing-related activities in the context of mitigating incidental mortality of non-target species and protecting the marine environment in accordance with Article IX of the Convention.

Disposal of Plastic Packaging Bands

1. The use on fishing vessels of plastic packaging bands to secure bait boxes shall be prohibited.

2. The use of other plastic packaging bands for other purposes on fishing vessels which do not use on-board incinerators (closed systems) shall be prohibited.

3. Any packaging bands, once removed from packages, shall be cut, so that they do not form a continuous loop and at the earliest opportunity burned in the on-board incinerator.

4. Any plastic residue shall be stored on board the vessel until reaching port and in no case discarded at sea.

Prohibition of Discharge in High-Latitude Fisheries

5. Vessels fishing south of 60°S shall be prohibited from dumping or discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted under Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells);

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots;

(vi) Offal; or

(vii) Incineration ash.

Translocation of Poultry

6. Live poultry or other living birds shall not be brought into areas south of 60°S, and any dressed poultry not consumed shall be removed from those areas.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 31–01 (1986)

Regulation of fishing around South Georgia (Statistical Subarea 48.3)

(Species: target; Area: 48.3; Season: all; Gear: all)

Without prejudice to other Conservation Measures adopted by the Commission, for species upon which fisheries are permitted around South Georgia (Statistical Subarea 48.3), the Commission shall, at its 1987 Meeting, adopt limitations on catch, or equivalent measures, binding for the 1987/88 season.

Such limitations of catch or equivalent measures shall be based upon the advice of the Scientific Committee, taking into account any data resulting from fishery surveys around South Georgia.

For each fishing season after 1987/88, the Commission shall establish such limitations or other measures, as necessary, around South Georgia on a similar basis at the meeting of the Commission immediately preceding that season.

Conservation Measure 32–01 (2001)

Fishing seasons

(Species: all; Area: all; Season: all; Gear: all)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

The fishing season for all Convention Area species is 1 December to 30 November of the following year, unless otherwise set in specific Conservation Measures.

Conservation Measure 32–02 (1998)

Prohibition of directed fishing for finfish in Statistical Subarea 48.1

(Species: target finfish; Area: 48.1; Season: all; Gear: all)

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea 48.1 from 7 November 1998 until at least such time that a survey of stock biomass is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that

the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–03 (1998)

Prohibition of directed fishing for finfish in Statistical Subarea 48.2
(Species: target finfish; Area: 48.2; Season: all; Gear: all)

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea48.2 from 7 November 1998 until at least such time that a survey of stock biomass is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–04 (1986) [1]

Prohibition of directed fishery on *Notothenia rossii* in the Peninsula area (Statistical Subarea 48.1)
(Species: rockcod; Area: 48.1; Season: all; Gear: all)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing on *Notothenia rossii* in the Peninsula area (Statistical Area 48.1) is prohibited.

By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

[1] This Conservation Measure remains in force, but is currently encompassed within the provisions in Conservation Measure 32–02.

Conservation Measure 32–05 (1986) [1]

Prohibition of directed fishery on *Notothenia rossii* around South Orkneys (Statistical Subarea 48.2)
(Species: rockcod; Area: 48.2; Season: all; Gear: all)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing on *Notothenia rossii* around South Orkneys (Statistical Subarea 48.2) is prohibited.

By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

[1] This Conservation Measure remains in force, but is currently encompassed within the provisions in Conservation Measure 32–03.

Conservation Measure 32–06 (1985)

Prohibition of directed fishery on *Notothenia rossii* around South Georgia (Statistical Subarea 48.3)
(Species: rockcod; Area: 48.3; Season: all; Gear: all)

1. Directed fishing on *Notothenia rossii* around South Georgia (Statistical Subarea 48.3) is prohibited.

2. By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

Conservation Measure 32–07 (1999)

Prohibition of directed fishery on *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus*, *Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3
(Species: target demersal; Area: 48.3; Season: all; Gear: trawl)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 31–01:

Directed fishing on *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3 is prohibited until a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–08 (1997)

Prohibition of directed fishing for *Lepidonotothen squamifrons* in Statistical Division 58.4.4 (Ob and Lena Banks)
(Species: rockcod; Area: 58.4.4; Season: all; Gear: all)

Directed fishing for *Lepidonotothen squamifrons,* other than for scientific research purposes, is prohibited in Statistical Division 58.4.4 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–09 (2006)

Prohibition of directed fishing for *Dissostichus* spp. except in accordance with specific Conservation Measures in the 2006/07 season
(Species: toothfish; Area: 48.5; Season: 2006/07; Gear: all)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 is prohibited from 1 December 2006 to 30 November 2007.

Conservation Measure 32–10 (2002)

Prohibition of directed fishing for *Dissostichus* spp. in Statistical Division 58.4.4 outside areas of national jurisdiction
(Species: toothfish; Area: 58.4.4; Season: all; Gear: all)

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.4.4 from 1 December 2002. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this division is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–11 (2002) [1] [2]

Prohibition of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 58.6
(Species: toothfish; Area: 58.6; Season: all; Gear: all)

Taking of *Dissostichus eleginoides,* other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 58.6 from 1 December 2002. This prohibition shall apply until at least such time that a survey of the *Dissostichus eleginoides* stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

[1] Except for waters adjacent to the Prince Edward Islands.

[2] Except for waters adjacent to the Crozet Islands.

Conservation Measure 32–12 (1998) [1]

Prohibition of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 58.7
(Species: toothfish; Area: 58.7; Season: all; Gear: all)

Taking of *Dissostichus eleginoides,* other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 58.7 from 7 November 1998. This prohibition shall apply until at least such time that a survey of the *Dissostichus eleginoides* stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment and a decision that the

fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

[1] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 32–13 (2003)

Prohibition of directed fishing for *Dissostichus eleginoides* in Statistical Division 58.5.1 outside areas of national jurisdiction
(Species: toothfish; Area: 58.5.1; Season: all; Gear: all)

Taking of *Dissostichus eleginoides,* other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.1 outside areas of national jurisdiction from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus eleginoides* stock in this division is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–14 (2003)

Prohibition of directed fishing for *Dissostichus eleginoides* in Statistical Division 58.5.2 east of 79°20′E and outside the EEZ to the west of 79°20′E
(Species: toothfish; Area: 58.5.2; Season: all; Gear: all)

Taking of *Dissostichus eleginoides,* other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.2 east of 79°20′E and outside the EEZ to the west of 79°20′E from 1 December 2003. This prohibition shall apply until at least such time that a survey of the Dissostichus eleginoides stock in this division is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–15 (2003)

Prohibition of directed fishing for *Dissostichus* spp. in Statistical Subarea 88.2 north of 65°S
(Species: toothfish; Area: 88.2; Season: all; Gear: all)

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.2 north of 65°S from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment (WG–FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–16 (2003)

Prohibition of directed fishing for *Dissostichus* spp. in Statistical Subarea 88.3
(Species: toothfish; Area: 88.3; Season: all; Gear: all)

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment (WG–FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 32–17 (2003)

Prohibition of directed fishing for *Electrona carlsbergi* in Statistical Subarea 48.3
(Species: lanternfish; Area: 48.3; Season: all; Gear: all)

Taking of *Electrona carlsbergi*, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 48.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Electrona carlsbergi* stock in this subarea is carried out, its results reported to and analysed by the Working Group on Fish Stock Assessment (WG–FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee; or a research plan for an exploratory fishery is submitted and approved by the Scientific Committee consistent with Conservation Measure 24–01.

Conservation Measure 32–18 (2006)

Conservation of sharks
(Species: sharks; Area: all; Season: all; Gear: all)

The Commission,

Recalling the aims of the Convention, and particularly its Article IX,

Recognising that the Food and Agriculture Organization of the United Nations (FAO), in its International Plan of Action for the Conservation and Management of Sharks, requests that States, within the framework of their respective competencies and consistent with international law, should strive to cooperate through regional fisheries management organisations with a view to ensuring the sustainability of shark stocks,

Mindful of the fact that a large number of sharks are caught in fisheries operating within the Convention Area and that such catch may be unsustainable,

Bearing in mind, furthermore, that, pending the collection of information on the status of shark stocks, it would be appropriate to restrict and, if possible, to reduce removals from these stocks,

Recognising the need to collect data on catches, discards and trade in order to manage and conserve sharks, hereby adopts the following Conservation Measure, in accordance with Article IX of the Convention:

1. Directed fishing on shark species in the Convention Area, for purposes other than scientific research, is prohibited. This prohibition shall apply until such time as the Scientific Committee has investigated and reported on the potential impacts of this fishing activity and the Commission has agreed on the basis of advice from the Scientific Committee that such fishing may occur in the Convention Area.

2. Any by-catch of shark, especially juveniles and gravid females, taken accidentally in other fisheries, shall, as far as possible, be released alive.

Conservation Measure 33–01 (1995)

Limitation of the by-catch of *Gobionotothen gibberifrons*, *Chaenocephalus aceratus*, *Pseudochaenichthys georgianus*, *Notothenia rossii* and *Lepidonotothen squamifrons* in Statistical Subarea 48.3
(Species: bycatch; Area: 48.3; Season: all; Gear: all)

This Conservation Measure is adopted in accordance with Conservation Measure 31–01: In any directed fishery in Statistical Subarea 48.3 in any fishing season, the by-catch of *Gobionotothen gibberifrons* shall not exceed 1,470 tonnes; the by-catch of *Chaenocephalus aceratus* shall not exceed 2,200 tonnes; and the by-catch of *Pseudochaenichthys georgianus*, *Notothenia rossii* and *Lepidonotothen squamifrons* shall not exceed 300 tonnes each. These limits shall be kept under review by the Commission taking into account the advice of the Scientific Committee.

Conservation Measure 33–02 (2006)

Limitation of by-catch in Statistical Division 58.5.2 in the 2006/07 season

(Species: by-catch; Area: 58.5.2; Season: 2006/07; Gear: all)

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2006/07 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2006/07 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes, the by-catch of *Macrourus* spp. shall not exceed 360 tonnes and the by-catch of skates and rays shall not exceed 120 tonnes. For the purposes of this measure, '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus*, *Lepidonotothen squamifrons*, *Macrourus* spp., *Somniosus* spp. or skates and rays is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2-tonnes for a period of at least five days [2]. The location where the by-catch exceeded 2-tonnes is defined as the path [3] followed by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this Conservation Measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days [2]. The location where the by-catch exceeded 1 tonne is defined as the path [3] followed by the fishing vessel.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline or a pot, the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

Conservation Measure 33–03 (2006) [1] [2]

Limitation of by-catch in new and exploratory fisheries in the 2006/07 season

(Species: by-catch; Area: various; Season: 2006/07; Gear: all)

1. This Conservation Measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2006/07 season, except where specific by-catch Conservation Measures apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A. Within these catch limits, the total catch of by-catch species in any SSRU or combination of SSRUs as defined in relevant Conservation Measures shall not exceed the following limits:

- Skates and rays 5% of the catch limit of *Dissostichus* spp. or 50 tonnes whichever is greater;
- *Macrourus* spp. 16% of the catch limit for *Dissostichus* spp. or 20 tonnes, whichever is greater;
- All other species combined 20 tonnes.

3. For the purposes of this measure '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

4. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [3] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days [4]. The location where the by-catch exceeded 1 tonne is defined as the path [5] followed by the fishing vessel.

5. If the catch of *Macrourus* spp. taken by a single vessel in any two 10-day periods [6] in a single SSRU exceeds 16% of the catch of *Dissostichus* spp. by that vessel in that SSRU in those periods, the vessel shall cease fishing in that SSRU for the remainder of the season.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[4] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[5] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

[6] A 10-day period is defined as day 1 to day 10, day 11 to day 20, or day 21 to the last day of the month.

Annex 33–03/A

TABLE 1.—BY-CATCH LIMITS FOR NEW AND EXPLORATORY FISHERIES IN 2006/07

Subarea/ division	Region	*Dissostichus* spp. catch limit (tonnes per region)	Skates and rays (tonnes per region)	By-catch catch limit *Macrourus* spp. (tonnes per region)	Other species (tonnes per SSRU)
48.6	north of 60° S	455	50	73	20
	south of 60° S	455	50	73	20
58.4.1	whole division	600	50	96	20
58.4.2	whole division	780	50	124	20
58.4.3a	whole division	250	50	26	20
58.4.3b	whole division	300	50	159	20
88.1	whole subarea	3032	152	485	20
88.2	south of 65° S	547	50	88	20

Region: As defined in column 2 of this table.

Rules for catch limits for by-catch species:

Skates and rays: 5% of the catch limit for *Dissostichus* spp. or 50 tonnes, which ever is greatest (SC–CAMLR–XXI, paragraph 5.76).

Macrourus spp.: 16% of the catch limit for *Dissostichus* spp., except in Divisions 58.4.3a and 58.4.3b (SC–CAMLR–XXII, paragraph 4.207).

Other species: 20 tonnes per SSRU.

Conservation Measure 41–01 (2006) [1] *thnsp;*[2]

General measures for exploratory fisheries for *Dissostichus* spp. in the Convention Area in the 2006/07 season

(Species: toothfish; Area: various; Season: 2006/07; Gear: longline, trawl)

The Commission hereby adopts the following Conservation Measure:

1. This Conservation Measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any small-scale research unit (SSRU) shall cease when the reported catch reaches the specified catch limit [3] and that SSRU shall be closed to fishing for the remainder of the season.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul for the purposes of catch and effort reporting;

(ii) The precise geographic position of a haul/set in longline fisheries will be determined by the centre-point of the line or lines deployed for the purposes of catch and effort reporting;

(iii) The vessel will be deemed to be fishing in any SSRU from the beginning of the setting process until the completion of the hauling of all lines;

(iv) Catch and effort information for each species by SSRU shall be reported to the Executive Secretary every five days using the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(v) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any SSRU is likely to reach the specified catch limit, and of the closure of that SSRU when that limit is reached. Upon such notification from the Secretariat, all fishing gear shall be hauled immediately. No part of a trawl path may lie within a closed SSRU and no part of a longline may be set within a closed SSRU.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2006/07 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 41–01/A), Research Plan (Annex 41–01/B) and Tagging Program (Annex 41–01/C) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2007 shall be reported to CCAMLR by 30 September 2007 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2007. Such data taken after 31 August 2007 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Unless otherwise specified, the catch limit for *Dissostichus* spp. shall be 100 tonnes in any SSRU except in respect of Subarea 88.2.

Annex 41–01/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms;

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type;

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 41–01/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any Conservation Measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 and Figure 1.

3. Except when fishing in Statistical Subareas 88.1 and 88.2 (see paragraph 5), any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into an SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, shall be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger

level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in an SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3,500 hooks and no more than 10,000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4);

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. In the exploratory fisheries in Subareas 88.1 and 88.2, all data specified in the Data Collection Plan (Annex 41–01/A) of this Conservation Measure shall be collected for every haul; all fish of each *Dissostichus* species in a haul (up to a maximum of 35 fish) are to be measured and randomly sampled for biological studies (paragraphs 2(iv) to (vi) of Annex 41–01/A).

6. In all other exploratory fisheries, all data specified in the Data Collection Plan (Annex 41–01/A) of this Conservation Measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to (vi) of Annex 41–01/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

TABLE 1.—DESCRIPTION OF SMALL-SCALE RESEARCH UNITS (SSRUS)

[see also Figure 1]

Region	SSRU	Boundary line
48.6	A	From 50° S 20° W, due east to 30° E, due south to 60° S, due west to 20° W, due north to 50° S.
	B	From 60° S 20° W, due east to 10° W, due south to coast, westward along coast to 20° W, due north to 60° S.
	C	From 60° S 10° W, due east to 0° longitude, due south to coast, westward along coast to 10° W, due north to 60° S.
	D	From 60° S 0° longitude, due east to 10° E, due south to coast, westward along coast to 0° longitude, due north to 60° S.
	E	From 60° S 10° E, due east to 20° E, due south to coast, westward along coast to 10° E, due north to 60° S.
	F	From 60° S 20° E, due east to 30° E, due south to coast, westward along coast to 20° E, due north to 60° S.
58.4.1	A	From 55° S 86° E, due east to 150° E, due south to 60° S, due west to 86° E, due north to 55° S.
	B	From 60° S 86° E, due east to 90° E, due south to coast, westward along coast to 80° E, due north to 64° S, due east to 86° E, due north to 60° S.
	C	From 60° S 90° E, due east to 100° E, due south to coast, westward along coast to 90° E, due north to 60° S.
	D	From 60° S 100° E, due east to 110° E, due south to coast, westward along coast to 100° E, due north to 60° S.
	E	From 60° S 110° E, due east to 120° E, due south to coast, westward along coast to 110° E, due north to 60° S.
	F	From 60° S 120° E, due east to 130° E, due south to coast, westward along coast to 120° E, due north to 60° S.
	G	From 60° S 130° E, due east to 140° E, due south to coast, westward along coast to 130° E, due north to 60° S.
	H	From 60° S 140° E, due east to 150° E, due south to coast, westward along coast to 140° E, due north to 60° S.
58.4.2	A	From 62° S 30° E, due east to 40° E, due south to coast, westward along coast to 30° E, due north to 62° S.
	B	From 62° S 40° E, due east to 50° E, due south to coast, westward along coast to 40° E, due north to 62° S.
	C	From 62° S 50° E, due east to 60° E, due south to coast, westward along coast to 50° E, due north to 62° S.
	D	From 62° S 60° E, due east to 70° E, due south to coast, westward along coast to 60° E, due north to 62° S.
	E	From 62° S 70° E, due east to 73° 10'E, due south to 64° S, due east to 80° E, due south to coast, westward along coast to 70° E, due north to 62° S.
58.4.3a	A	Whole division, from 56° S 60° E, due east to 73° 10'E, due south to 62° S, due west to 60° E, due north to 56° S.
58.4.3b	A	Whole division, from 56° S 73° 10'E, due east to 80° E, due north to 55° S, due east to 86° E, south to 64° S, due west to 73° 10'E, due north to 56° S.
58.4.4	A	From 51° S 40° E, due east to 42° E, due south to 54° S, due west to 40° E, due north to 51° S.
	B	From 51° S 42° E, due east to 46° E, due south to 54° S, due west to 42° E, due north to 51° S.
	C	From 51° S 46° E, due east to 50° E, due south to 54° S, due west to 46° E, due north to 51° S.
	D	Whole division excluding SSRUs A, B, C, and with outer boundary from 50° S 30° E, due east to 60° E, due south to 62° S, due west to 30° E, due north to 50° S.
58.6	A	From 45° S 40° E, due east to 44° E, due south to 48° S, due west to 40° E, due north to 45° S.
	B	From 45° S 44° E, due east to 48° E, due south to 48° S, due west to 44° E, due north to 45° S.
	C	From 45° S 48° E, due east to 51° E, due south to 48° S, due west to 48° E, due north to 45° S.
	D	From 45° S 51° E, due east to 54° E, due south to 48° S, due west to 51° E, due north to 45° S.
58.7	A	From 45° S 37° E, due east to 40° E, due south to 48° S, due west to 37° E, due north to 45° S.
88.1	A	From 60° S 150° E, due east to 170° E, due south to 65° S, due west to 150° E, due north to 60° S.
	B	From 60° S 170° E, due east to 179° E, due south to 66° 40'S, due west to 170° E, due north to 60° S.
	C	From 60° S 179° E, due east to 170° W, due south to 70° S, due west to 178° W, due north to 66° 40'S, due west to 179° E, due north to 60° S.
	D	From 65° S 150° E, due east to 160° E, due south to coast, westward along coast to 150° E, due north to 65° S.
	E	From 65° S 160° E, due east to 170° E, due south to 68° 30'S, due west to 160° E, due north to 65° S.
	F	From 68° 30'S 160° E, due east to 170° E, due south to coast, westward along coast to 160° E, due north to 68° 30'S.
	G	From 66° 40'S 170° E, due east to 178° W, due south to 70° S, due west to 178° 50'E, due south to 70° 50'S, due west to 170° E, due north to 66° 40'S.
	H	From 70° 50'S 170° E, due east to 178° 50'E, due south to 73° S, due west to coast, northward along coast to 170° E, due north to 70° 50'S.

TABLE 1.—DESCRIPTION OF SMALL-SCALE RESEARCH UNITS (SSRUs)—Continued

[see also Figure 1]

Region	SSRU	Boundary line
	I	From 70° S 178° 50'E, due east to 170° W, due south to 73° S, due west to 178° 50'E, due north to 70° S.
	J	From 73° S at coast near 169° 30'E, due east to 178° 50'E, due south to 80° S, due west to coast, northward along coast to 73° S.
	K	From 73° S 178° 50'E, due east to 170° W, due south to 76° S, due west to 178° 50'E, due north to 73° S.
	L	From 76° S 178° 50'E, due east to 170° W, due south to 80° S, due west to 178° 50'E, due north to 76° S.
88.2	A	From 60° S 170° W, due east to 160° W, due south to coast, westward along coast to 170° W, due north to 60° S.
	B	From 60° S 160° W, due east to 150° W, due south to coast, westward along coast to 160° W, due north to 60° S.
	C	From 60° S 150° W, due east to 140° W, due south to coast, westward along coast to 150° W, due north to 60° S.
	D	From 60° S 140° W, due east to 130° W, due south to coast, westward along coast to 140° W, due north to 60° S.
	E	From 60° S 130° W, due east to 120° W, due south to coast, westward along coast to 130° W, due north to 60° S.
	F	From 60° S 120° W, due east to 110° W, due south to coast, westward along coast to 120° W, due north to 60° S.
	G	From 60° S 110° W, due east to 105° W, due south to coast, westward along coast to 110° W, due north to 60° S.
88.3	A	From 60° S 105° W, due east to 95° W, due south to coast, westward along coast to 105° W, due north to 60° S.
	B	From 60° S 95° W, due east to 85° W, due south to coast, westward along coast to 95° W, due north to 60° S.
	C	From 60° S 85° W, due east to 75° W, due south to coast, westward along coast to 85° W, due north to 60° S.
	D	From 60° S 75° W, due east to 70° W, due south to coast, westward along coast to 75° W, due north to 60° S.

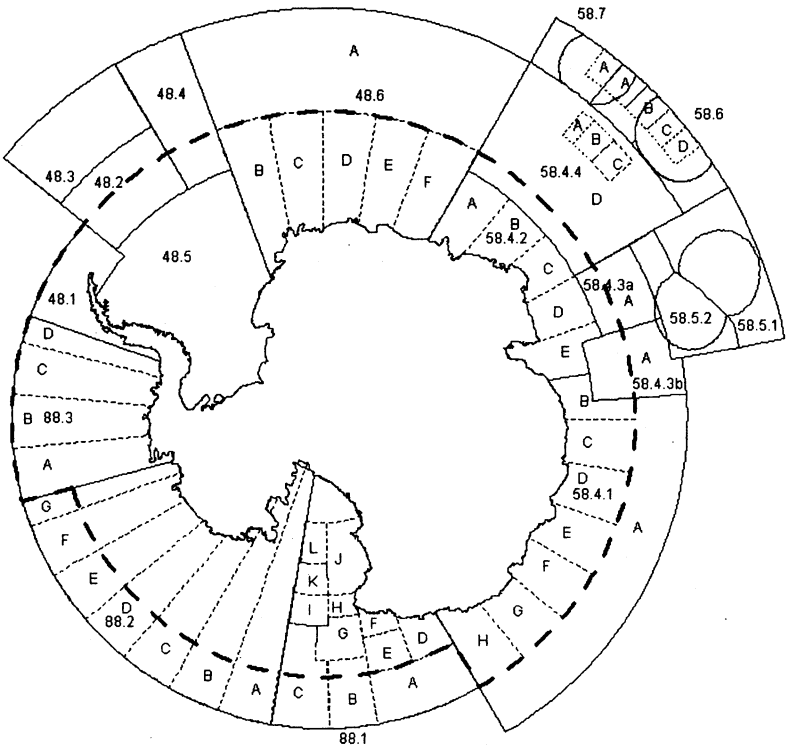


Figure 1: Small-scale research units for new and exploratory fisheries. The boundaries of these units are listed in Table 1. EEZ boundaries for Australia, France and South Africa are marked in order to address notifications for new and exploratory fisheries in waters adjacent to these zones. Dashed line – delineation between Dissostichus eleginoides and Dissostichus mawsoni.

Annex 41–01/C

Tagging Program for *Dissostichus* SPP. in Exploratory Fisheries

1. The responsibility for ensuring tagging, tag recovery and correct reporting shall lie with the Flag State of the fishing vessel. The fishing vessel shall cooperate with the CCAMLR scientific observer in undertaking the tagging program.

2. This program shall apply in each exploratory longline fishery, and any vessel that participates in more then one exploratory fishery shall apply the following in each exploratory fishery in which that vessel fishes:

(i) Each longline vessel shall tag and release *Dissostichus* spp. at a rate specified in the Conservation Measure for that fishery throughout the season

according to the CCAMLR Tagging Protocol[1]. Vessels shall only discontinue tagging after they have tagged 500 toothfish, or if they leave the fishery having tagged toothfish at the specified rate.

(ii) The program shall target toothfish of all sizes in order to meet the tagging requirement, only toothfish that are in good condition shall be tagged and the availability of these fish shall be reported by the observer. All released toothfish must be double-tagged and releases should cover as broad a geographical area as possible. In regions where both species occur, the tagging rate shall to the extent practicable be in proportion to the species and sizes of *Dissostichus* spp. present in the catches.

(iii) All tags shall be clearly imprinted with a unique serial number and a return address so that the origin of tags can be traced in the case of recapture of the tagged toothfish[1]. From 1 September 2007, all tags for use in exploratory fisheries shall be sourced from the Secretariat.

(iv) Recaptured tagged fish (i.e. fish caught that have a previously inserted tag) shall not be re-released, even if at liberty for only a short period.

(v) All recaptured tagged fish should be biologically sampled (length, weight, sex, gonad stage), an electronic time-stamped photograph taken of the fish and tag[2], the otoliths recovered and the tag removed.

3. Toothfish that are tagged and released shall not be counted against the catch limits.

4. All relevant tag data and any data recording tag recaptures shall be reported electronically in the CCAMLR format[1] to the Executive Secretary (i) by the vessel every month along with its monthly fine-scale catch and effort (C2) data, and (ii) by the observer as part of the data reporting requirements for observer data[1].

5. All relevant tag data, any data recording tag recaptures, and specimens (tags and otoliths) from recaptures shall also be reported electronically in the CCAMLR format[1] to the relevant regional tag data repository as detailed in the CCAMLR Tagging Protocol (available at www.ccamlr.org).

[1] In accordance with the CCAMLR Tagging Protocol for exploratory fisheries which is available from the Secretariat and included in the scientific observer logbook forms.

[2] For a single trial year (2006/07) observers should take a time-stamped photographic record of all tags recovered and forward these photographs to the Secretariat.

Conservation Measure 41–02 (2006)

Limits on the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2006/07 season (Species: toothfish; Area: 48.3; Season: 2006/07; Gear: longline, pot)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

2. For the purpose of this fishery, the area open to the fishery is defined as that portion of Statistical Subarea 48.3 that lies within the area bounded by latitudes 52°30′S and 56°0′S and by longitudes 33°30′W and 48°0′W.

3. A map illustrating the area defined by paragraph 2 is appended to this Conservation Measure (Annex 41–02/A). The portion of Statistical Subarea 48.3 outside that defined above shall be closed to directed fishing for Dissostichus eleginoides in the 2006/07 season.

Catch Limit 4. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2006/07 season shall be limited to 3–554 tonnes. The catch limit shall be further subdivided between the Management Areas shown in Annex 41–02/A as follows:

Management Area A: 0 tonnes
Management Area B: 1,066 tonnes
Management Area C: 2,488 tonnes

Season 5. For the purpose of the longline fishery for Dissostichus eleginoides in Statistical Subarea 48.3, the 2006/07 season is defined as the period from 1 May to 31 August 2007, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2007 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2005/06 season. This extension to the season shall also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.

By-catch 6. The by-catch of crab in any pot fishery undertaken shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.

7. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2006/07 season shall not exceed 177 tonnes for skates and rays and 177 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, ''*Macrourus* spp.'' and ''skates and rays' shall each be counted as a single species.

8. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles[1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days[2]. The location where the by-catch exceeded 1 tonne is defined as the path[3] followed by the fishing vessel.

Mitigation 9. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers 10. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

11. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

12. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

13. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

14. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research Fishing

15. Research fishing under the provisions of Conservation Measure 24–01 shall be limited to 10 tonnes of catch and to one vessel in Management Area

A shown in the map in Annex 41–02/A during the 2006/07 season.

16. Catches of *Dissostichus eleginoides* taken under the provisions of Conservation Measure 24–01 in the area of the fishery defined in this Conservation Measure shall be considered as part of the catch limit.

Environmental Protection

17. Conservation Measure 26–01 applies.

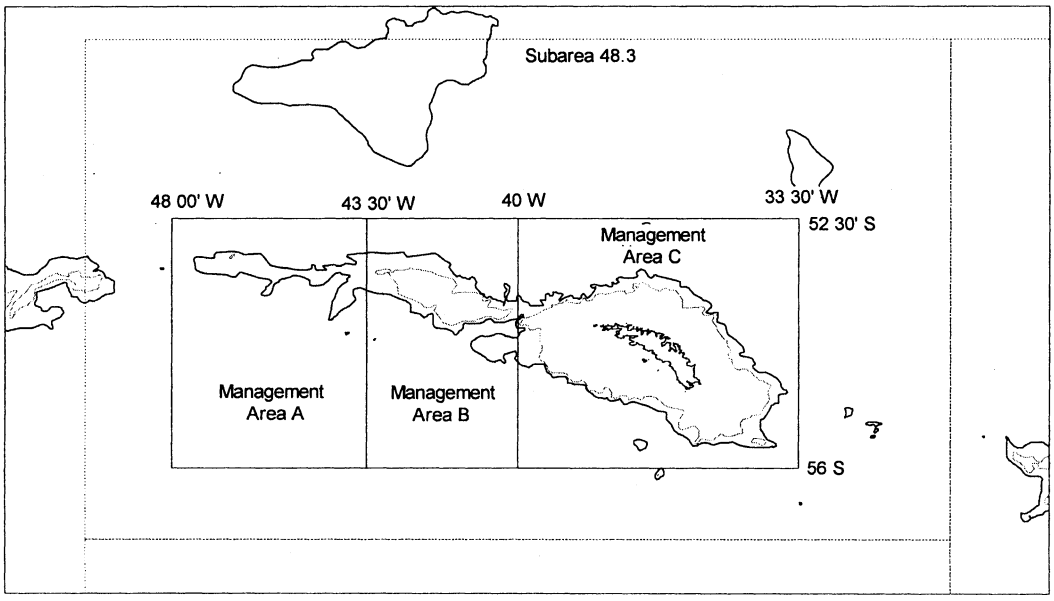
[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] For a longline or a pot, the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

ANNEX 41-02/A

Subarea 48.3 – the area of the fishery and the three management areas for catch allocation according to paragraph 4. Latitudes and longitudes are given in degrees and minutes. 1,000 and 2,000 m contours are shown.



Conservation Measure 41–03 (2006)

Limits on the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4 in the 2005/06, 2006/07 and 2007/08 fishing seasons

(Species: toothfish; Area: 48.4; Season: 2005/06–2007/08; Gear: longline)

Access 1. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be prohibited.

2. For the purpose of this fishery, the area open to fishing is defined as that portion of Statistical Subarea 48.4 that lies within the area bounded by latitudes 55°30′ S and 57°20′ S and by longitudes 25°30′ W and 29°30′ W.

3. A map illustrating the area defined by paragraph 2 is appended to this Conservation Measure (Annex 41–03/A). The portion of Statistical Subarea 48.4 outside that defined above shall be closed to directed fishing for *Dissostichus eleginoides* in the 2005/06, 2006/07 and 2007/08 seasons.

Catch Limit 4. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be limited to 100 tonnes per season.

5. Taking of *Dissostichus mawsoni*, other than for scientific research purposes, is prohibited.

Season 6. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the fishing season shall be 1 April to 30 September, or until the catch limit for *Dissostichus eleginoides* in Statistical Subarea 48.4 is reached, whichever is sooner.

Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers 8. Each vessel participating in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall have at least one scientific observer appointed in accordance with the ccamlr Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this Conservation Measure, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure-23–01;

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 23–04. Data shall be reported on a haul–by–haul basis. For the purposes of Conservation Measure 23–04, the target species is *Dissostichus eleginoides*, and 'by-catch species' are defined as any species other than *Dissostichus eleginoides*.

Data: Biological

10. Fine-scale biological data, as required under Conservation Measure 23–05 shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Tagging Program

11. Each vessel taking part in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall undertake a tagging program in accordance with the CCAMLR Tagging Protocol. The following additional provisions shall apply:

(i) fish should be tagged at an average rate of five fish per tonne of green weight catch throughout the season;

(ii) fish should be tagged that have been caught across as broad a range of depths within the designated area as practicable;

(iii) fish of a range of total lengths should be tagged, concentrating in particular on animals in the vulnerable size range (6501–000 mm).

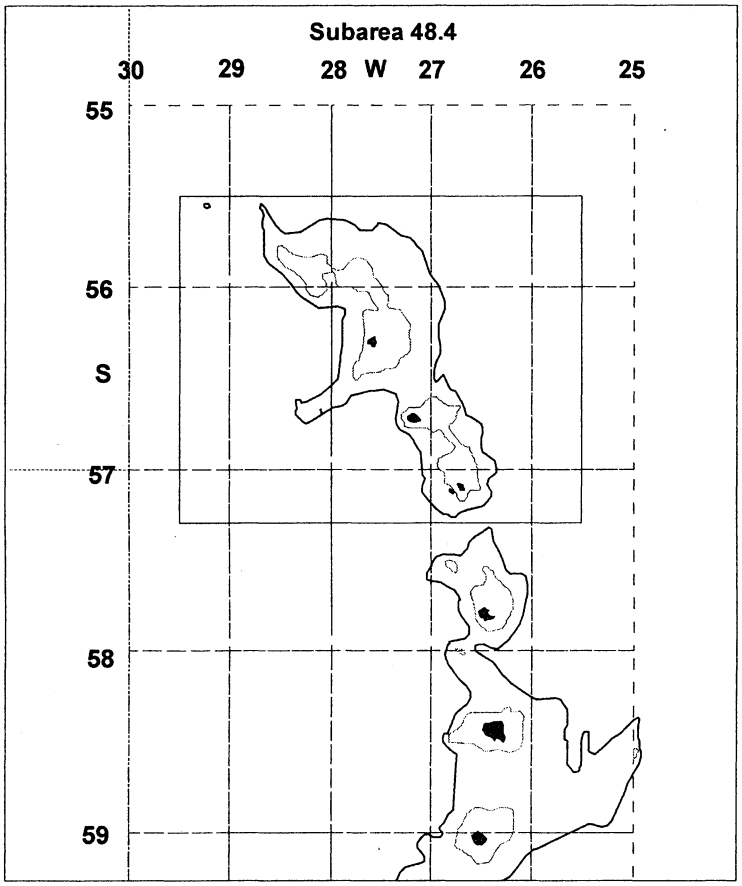
Environmental Protection

12. Conservation Measure 26–01 applies.

BILLING CODE 3510–22–P

ANNEX 41-03/A

Subarea 48.4 – the area of the fishery in the 2005/06, 2006/07 and 2007/08 seasons according to paragraph 2. Latitudes and longitudes are given in degrees. 1,000 and 2,000 m contours are shown.



BILLING CODE 3510–22–C

Conservation Measure 41–04 (2006)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in the 2006/07 season (Species: toothfish; Area: 48.6; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissosichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, Republic of Korea, New Zealand and Norway. The fishery shall be conducted by Japanese, Korean, New Zealand and Norwegian flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit 2. The total catch of *Dissosichus* spp. in Statistical Subarea 48.6 in the 2006/07 season shall not exceed a precautionary catch limit of 455 tonnes north of 60 ° S and 455 tonnes south of 60° S.

Season 3. For the purpose of the exploratory longline fishery for *Dissosichus* spp. in Statistical Subarea 48.6, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007.

By-Catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The exploratory longline fishery for *Dissosichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.[1]

6. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

Observers 7. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

8. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

9. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissosichus* spp. and by–catch species are defined as any species other than *Dissosichus* spp.

Data: Biological

10. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery–based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

12. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught.

Environmental Protection

13. Conservation Measure 26–01 applies.

14. There shall be no offal discharge in this fishery.

[1] The Japanese-flagged vessel *Shinsei Maru No. 3* is exempted from the requirement to conduct longline sink rate tests outside the Convention Area when fishing at the end of the 2005/06 season and into the 2006/07 season, provided that the vessel conducted regular longline sink rate testing in 2005/06.

Conservation Measure 41–05 (2006)

Limits on the exploratory fishery for *Dissosichus* spp. in Statistical Division 58.4.2 in the 2006/07 season (Species: toothfish; Area: 58.4.2; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee:

Access 1. Fishing for *Dissosichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Australia, Republic of Korea, Namibia, New Zealand, Spain and Uruguay. The fishery shall be conducted by one (1) Australian, three (3) Korean, one (1) Namibian, two (2) New Zealand, one (1) Spanish and one (1) Uruguayan flagged vessels using longlines only.

Catch Limit 2. The total catch of *Dissosichus* spp. in Statistical Division 58.4.2 in the 2006/07 season shall not exceed a precautionary catch limit of 780 tonnes, of which no more than 260 tonnes shall be taken in any one of the five small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01.

3. Catch limits for each of the SSRUs for Statistical Division 58.4.2, shall be as follows: A — 260 tonnes; B — 0 tonnes; C — 260 tonnes; D — 0 tonnes; E — 260 tonnes.

Season 4. For the purpose of the exploratory longline fishery for *Dissosichus* spp. in Statistical Division 58.4.2, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007.

Fishing Operations

5. The exploratory longline fishery for *Dissosichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.

By-Catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The exploratory longline fishery for *Dissosichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels comply with Conservation Measure 24–02.

9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

Observers 10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery–based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

12. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.

Data: Catch/Effort

13. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target

species is *Dissosichus* spp. and by–catch species are defined as any species other than *Dissosichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

16. Conservation Measure 26–01 applies.

Conservation Measure 41–06 (2006)

Limits on the exploratory fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2006/07 season

(Species: toothfish; Area: 58.4.3a; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory fishery by Japan, Republic of Korea and Spain. The fishery shall be conducted by Japanese, Korean and Spanish flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit 2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2006/07 season shall not exceed a precautionary catch limit of 250 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2006/07 season is defined as the period from 1 May to 31 August 2007, or until the catch limit is reached, whichever is sooner.

By-Catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

6. The fishery on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with longline weighting as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2006/07 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by–catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery–based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught.

Environmental Protection

14. Conservation Measure 26–01 applies.

Conservation Measure 41–07 (2006)

Limits on the exploratory fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2006/07 season

(Species: toothfish; Area: 58.4.3b; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory fishery by Australia, Japan, Republic of Korea, Namibia, Spain and Uruguay. The fishery shall be conducted by Australian, Japanese, Korean, Namibian, Spanish and Uruguayan flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit 2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2006/07 season shall not exceed a precautionary catch limit of 300 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2006/07 season is defined as the period from 1 May to 31 August 2007, or until the catch limit is reached, whichever is sooner.

By-Catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

6. The fishery on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2006/07 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR

Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by–catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught.

Environmental Protection

14. Conservation Measure 26–01 applies.

Conservation Measure 41–08 (2006)

Limits on the fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2006/07 season

(Species: toothfish; Area: 58.5.2; Season: 2006/2007; Gear: various)

Access 1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls, pots or longlines only.

Catch Limit 2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2006/07 season shall be limited to 2,427 tonnes west of 79°20′E.

Season 3. For the purpose of the trawl and pot fisheries for Dissostichus eleginoides in Statistical Division 58.5.2, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for Dissostichus eleginoides in Statistical Division 58.5.2, the 2006/07 season is defined as the period from 1 May to 31 August 2007, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended from 15 April to 30 April and 1 September to 30 September 2007 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2005/06 season. These extensions to the season will also be subject to a total catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing throughout the season extensions shall cease immediately for that vessel.

By-Catch 4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 5. The operation of the trawl fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds and mammals through the course of fishing. The operation of the longline fishery shall be carried out in accordance with Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply for vessels using integrated weighted lines (IWLs) during the period 1 May to 30 September. Such vessels may deploy IWL gear during daylight hours if, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02. During the period 15 April to 30 April, vessels shall use IWL gear and in a manner that ensures lines are set and hauled sequentially, in conjunction with night setting and paired streamer lines.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period, with the exception of the period 15 April to 30 April when two scientific observers shall be carried.

Data: Catch/Effort

7. For the purpose of implementing this Conservation Measure, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 41–08/A;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 41–08/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

10. Fine-scale biological data, as required under Annex 41–08/A, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

11. Conservation Measure 26–01 applies.

Annex 41–08/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during

the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1 for trawl fishing, form C2 for longline fishing, or form C5 for pot fishing, latest versions. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) length measurements shall be to the nearest centimetre below;

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 41–09 (2006)

Limits on the exploratory fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2006/07 season (Species: toothfish; Area: 88.1; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Argentina, Republic of Korea, New Zealand, Norway, Russia, South Africa, Spain, UK and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, three (3) Korean, four (4) New Zealand, one (1) Norwegian, two (2) Russian, one (1) South African, one (1) Spanish, two (2) UK and five (5) Uruguayan flagged vessels using longlines only.

Catch Limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2006/07 season shall not exceed a precautionary catch limit of 3,032 tonnes applied as follows:

SSRU A—0 tonnes
SSRUs B, C and G—356 tonnes total
SSRU D—0 tonnes
SSRU E—0 tonnes
SSRU F—0 tonnes
SSRUs H, I and K—1,936 tonnes total
SSRU J —564 tonnes
SSRU L—176 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2006/07 season is defined as the period from 1 December 2006 to 31 August 2007.

Fishing Operations

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

By-Catch 5. The total by-catch in Statistical Subarea 88.1 in the 2006/07 season shall not exceed a precautionary catch limit of 152 tonnes of skates and rays, and 485 tonnes of *Macrourus* spp. Within these total by-catch limits, individual limits will apply as follows:

SSRU A—0 tonnes of any species
SSRUs B, C and G total—50 tonnes of skates and rays, 57 tonnes of *Macrourus* spp., 60 tonnes of other species
SSRU D—0 tonnes of any species
SSRU E—0 tonnes of any species
SSRU F—0 tonnes of any species
SSRUs H, I and K total—97 tonnes of skates and rays, 310 tonnes of *Macrourus* spp., 60 tonnes of other species
SSRU J—50 tonnes of skates and rays, 90 tonnes of *Macrourus* spp., 20 tonnes of other species
SSRU L—50 tonnes of skates and rays, 28 tonnes of *Macrourus* spp., 20 tonnes of other species.

The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.

7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

Observers 8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 9. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 10. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively. The setting of research hauls (Conservation Measure 41–01, Annex B, paragraphs 3 and 4) is not required.

12. Research fishing under Conservation Measure 24–01 shall be limited to 10 tonnes of *Dissostichus* spp. green weight and a single vessel in each of SSRUs A, D, E and F during the 2006/07 season. Catches of *Dissostichus* spp. taken in SSRUs A, D, E and F under the provisions of Conservation Measure 24–01 shall not be considered as part of the catch limit for Statistical Subarea 88.1.

13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught in each SSRU, except in SSRUs A, D, E and F where, under the 10-tonne research fishing limit, toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.

Data: Catch/Effort

14. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in

accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

17. Conservation Measure 26–01 applies.

Additional Elements

18. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 41–10 (2006)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.2 in the 2006/07 season (Species: toothfish; Area: 88.2; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Argentina, New Zealand, Norway, Russia, Spain, UK and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, four (4) New Zealand, one (1) Norwegian, two (2) Russian, one (1) Spanish, two (2) UK and four (4) Uruguayan flagged vessels using longlines only.

Catch Limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2006/07 season shall not exceed a precautionary catch limit of 547 tonnes applied as follows:

SSRU A—0 tonnes
SSRU B—0 tonnes
SSRUs C, D, F and G—206 tonnes total
SSRU E—341 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2006/07 season is defined as the period from 1 December 2006 to 31 August 2007.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

By-Catch 5. The total by-catch in Statistical Subarea 88.2 in the 2006/07 season shall not exceed a precautionary catch limit of 50 tonnes of skates and rays, and 88 tonnes of *Macrourus* spp. Within these total by-catch limits, individual limits will apply as follows:

SSRU A—0 tonnes of any species
SSRU B—0 tonnes of any species
SSRUs C, D, F, G—50 tonnes of skates and rays, 33 tonnes of *Macrourus* spp., 20 tonnes of other species in any SSRU
SSRU E—50 tonnes of skates and rays, 55 tonnes of *Macrourus* spp., 20 tonnes of other species.

The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.

7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

Observers 8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 9. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 10. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for Dissostichus spp., in accordance with Conservation Measure 10–05.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively. The setting of research hauls (Conservation Measure 41–01, Annex B, paragraphs 3 and 4) is not required.

12. Research fishing under Conservation Measure 24–01 shall be limited to 10 tonnes of *Dissostichus* spp. green weight and a single vessel in each of SSRUs A and B during the 2006/07 season. Catches of *Dissostichus* spp. taken under the provisions of Conservation Measure 24–01 shall not be considered as part of the catch limit for Subarea 88.2.

13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught in each SSRU, except in SSRUs A and B where, under the 10-tonne research fishing limit, toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.

Data: Catch/Effort

14. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

17. Conservation Measure 26–01 applies.

Conservation Measure 41–11 (2006)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.1 in the 2006/07 season (Species: toothfish; Area: 58.4.1; Season: 2006/2007; Gear: longline)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.1 shall be limited to the exploratory longline fishery by Australia, Republic of Korea, Namibia, New Zealand, Spain and Uruguay. The fishery shall be conducted by one (1) Australian, two (2) Korean, one (1) Namibian, three (3) New Zealand, one (1) Spanish and one (1) Uruguayan flagged vessels using longlines only.

Catch Limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.1 in the 2006/07 season shall not exceed a precautionary catch limit of 600 tonnes, of which no more than 200 tonnes shall be taken in any one of the eight small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01.

3. Catch limits for each of the SSRUs for Statistical Division 58.4.1, shall be as follows: A—0 tonnes; B—0 tonnes; C—200 tonnes; D—0 tonnes; E—200 tonnes; F—0 tonnes; G—200 tonnes; H—0 tonnes.

Season 4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1, the 2006/07 season is defined as

the period from 1 December 2006 to 30 November 2007.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.

By-catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels comply with Conservation Measure 24–02.

9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

Observers 10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

12. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.

Data: Catch/Effort

13. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

16. Conservation Measure 26–01 applies.

17. There shall be no offal discharge in this fishery.

Conservation Measure 42–01 (2006)

Limits on the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2006/07 season

(Species: icefish; Area: 48.3; Season: 2006/2007; Gear: trawl)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May (spawning period).

Catch Limit 3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2006/07 season shall be limited to 4 337 tonnes. The total catch of *Champsocephalus gunnari* taken in the period 1 March to 31 May shall be limited to 1,084 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days. [2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season 5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2006/07 season is defined as the period from 15 November 2006 to 14 November 2007, or until the catch limit is reached, whichever is sooner.

By-Catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 33–01

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tonnes, then

the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of the fishery. Vessels are encouraged to use net binding [3] as a means to reduce seabird interactions.

8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2006/07 season.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure

23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 13. Each vessel operating in this fishery during the period 1 March to 31 May 2007 shall conduct twenty (20) research trawls in the manner described in Annex 42–01/A.

Environmental Protection

14. Conservation Measure 26–01 applies.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] See SC–CAMLR–XXV, Annex 5, Appendix D, paragraph 59 for guidelines for net binding.

Annex 42–01/A

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 March and 31 May shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area. These shall be distributed between the four sectors illustrated in Figure 1: Four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep, as illustrated in Figure 1.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible, weight. More fish should be examined if the catch is large and time permits.

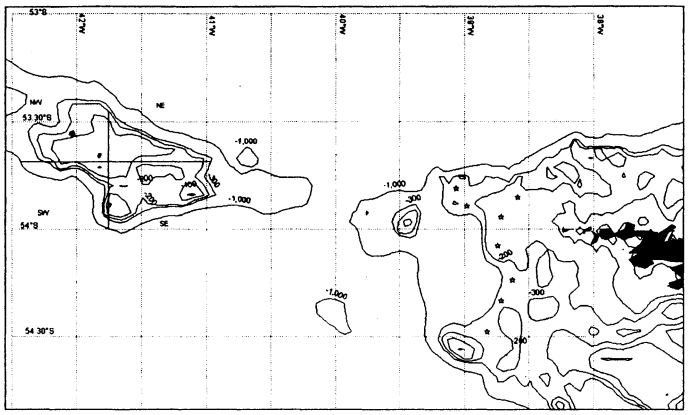


Figure 1: Distribution of 20 research hauls on Champsocephalus gunnari at Shag Rocks (12) and South Georgia (8) from 1 March to 31 May. Haul locations around South Georgia (stars) are illustrative.

Conservation Measure 42–02 (2006)

Limits on the fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2006/07 season

(Species: icefish; Area: 58.5.2; Season: 2006/2007; Gear: trawl)

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) starting at the point where the meridian of longitude 72°15′E intersects the Australia France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;

(ii) then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;

(iv) then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E;

(vi) then southwesterly along the geodesic to the point of commencement.

3. A chart illustrating the above definition is appended to this Conservation Measure (Annex 42–02/A). Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch Limit 4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2006/07 season shall be limited to 42 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than the specified minimum legal total length, the fishing vessel shall move to another fishing location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days [2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. The minimum legal total length shall be 240 mm.

Season 6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007, or until the catch limit is reached, whichever is sooner.

By-Catch 7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 42–02/B;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Annex 42–02/B, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental Protection

13. Conservation Measure 26–01 applies.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

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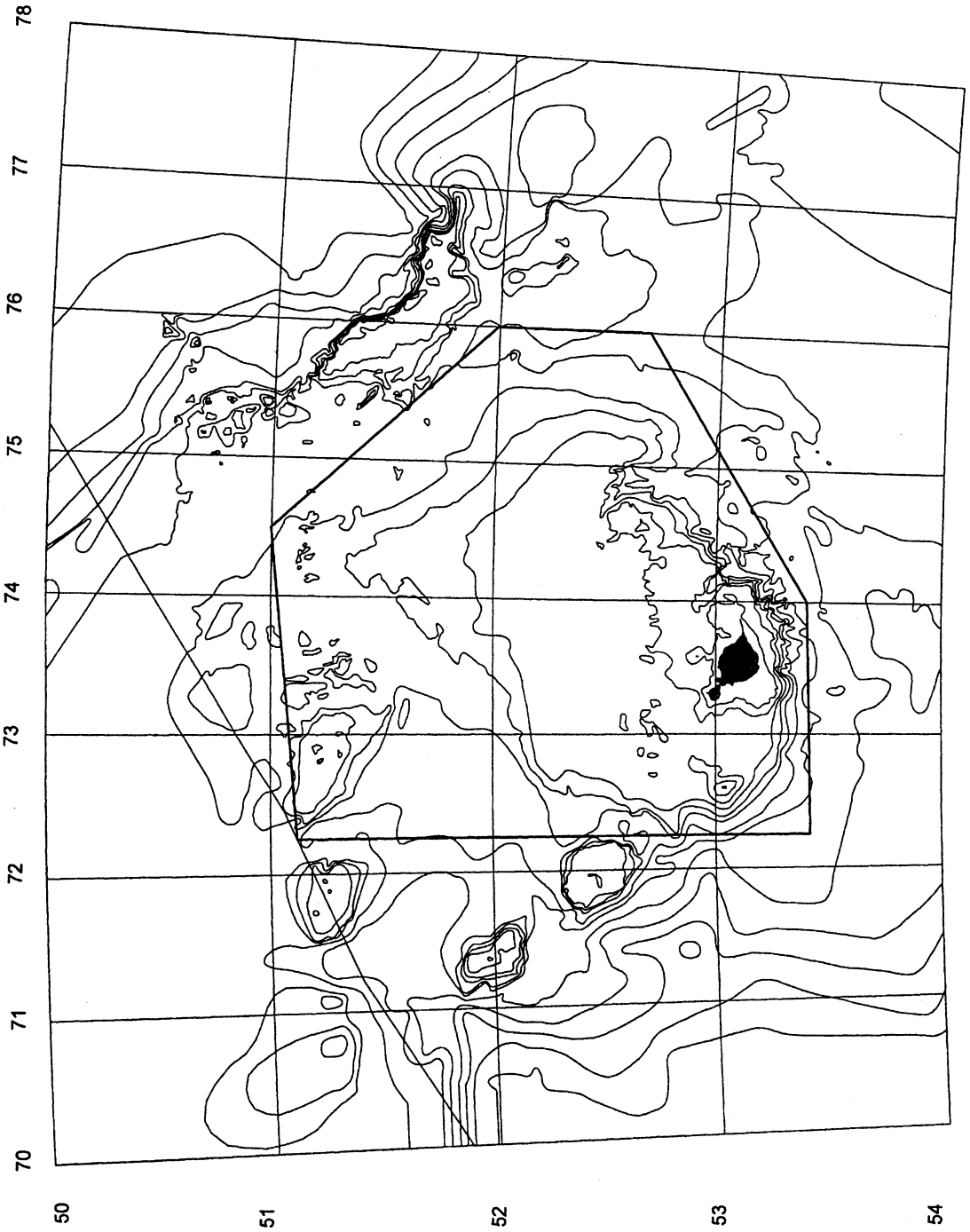
ANNEX 42-02/A

CHART OF THE HEARD ISLAND PLATEAU



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Annex 42–02/B

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) length measurements shall be to the nearest centimetre below;

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 51–01 (2006)

Precautionary catch limitations on *Euphausia superba* in Statistical Area 48

(Species: krill; Area: 48; Season: all; Gear: trawl)

Catch Limit 1. The total catch of *Euphausia superba* in Statistical Area 48 shall be limited to 4.0 million tonnes in any fishing season.

2. The total catch shall be further subdivided into statistical subareas as follows:

Subarea 48.1—1.008 million tonnes
Subarea 48.2—1.104 million tonnes
Subarea 48.3—1.056 million tonnes
Subarea 48.4—0.832 million tonnes

3. Precautionary catch limits to be agreed by the Commission on the basis of advice of the Scientific Committee shall be applied to smaller management units, or on such other basis as the Scientific Committee may advise, if the total catch in Statistical Area 48 in any fishing season exceeds 620,000 tonnes.

4. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 5. A fishing season begins on 1 December and finishes on 30 November of the following year.

Data 6. For the purpose of implementing this Conservation Measure, the data requirements set out in Conservation Measure 23–06 shall apply.

Environmental Protection

7. Conservation Measure 26–01 applies.

Conservation Measure 51–02 (2006)

Precautionary catch limitation on *Euphausia superba* in Statistical Division 58.4.1

(Species: krill; Area: 58.4.1; Season: all; Gear: trawl)

Catch Limit 1. The total catch of *Euphausia superba* in Statistical Division 58.4.1 shall be limited to 440,000 tonnes in any fishing season.

2. The total catch shall be further subdivided into two subdivisions within Statistical Division 58.4.1 as follows: west of 115° E, 277,000 tonnes; and east of 115° E, 163,000 tonnes.

3. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 4. A fishing season begins on 1 December and finishes on 30 November the following year.

Data 5. For the purposes of implementing this Conservation Measure, the data requirements set out in Conservation Measure 23–06 shall apply.

Environmental Protection

6. Conservation Measure 26–01 applies.

Conservation Measure 51–03 (2006)

Precautionary catch limitation on *Euphausia superba* in Statistical Division 58.4.2

(Species: krill; Area: 58.4.2; Season: all; Gear: trawl)

Catch Limit 1. The total catch of *Euphausia superba* in Statistical Division 58.4.2 shall be limited to 450,000 tonnes in any fishing season. This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 2. A fishing season begins on 1 December and finishes on 30 November of the following year.

Data 3. For the purposes of implementing this Conservation Measure, the data requirements set out in Conservation Measure 23–06 shall apply.

Environmental Protection

4. Conservation Measure 26–01 applies.

Conservation Measure 52–01 (2006)

Limits on the fishery for crab in Statistical Subarea 48.3 in the 2006/07 season

(Species: crab; Area: 48.3; Season: 2006/07; Gear: pot)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorised to participate in the crab fishery.

Catch Limit 4. The total catch of crab in Statistical Subarea 48.3 in the 2006/07 season shall not exceed a precautionary catch limit of 1,600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 and 90 mm respectively, may be retained in the catch.

Season 6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007, or until the catch limit is reached, whichever is sooner.

By-Catch 7. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.

Data: Catch/Effort

9. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–02 and 23–04 the target species is crab and by-catch species are defined as any species other than crab.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 52–01/A and the experimental harvest regime described in Conservation Measure 52–02. Data collected for the period up to 31 August 2007 shall be reported to CCAMLR by 30 September 2007 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2007. Such data collected after 31 August 2007 shall be reported to CCAMLR not later than three months after the closure of the fishery.

Environmental Protection

13. Conservation Measure 26–01 applies.

Annex 52–01/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:

Cruise Descriptions

Cruise code, vessel code, permit number, year.

Pot Descriptions

Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data requirements
Dissostichus eleginoides	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data:

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

Cruise code, vessel code, permit number.

Sample Descriptions

Date, position at start of the set, compass bearing of the set, line number.

Data

Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 52–02 (2006)

Experimental harvest regime for the crab fishery in Statistical Subarea 48.3 in the 2006/07 season

(Species: crab; Area: 48.3; Season: 2006/07; Gear: pot)

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2006/07 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2006/07 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this Conservation Measure, these blocks shall be numbered A to L. In Annex 52–02/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) if a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime, the remaining pot hours shall be expended before it can be considered that the

vessel has completed the experimental harvesting regime;

(v) after completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2007 shall be submitted to CCAMLR by 31 August 2007.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01.

6. Fishing vessels shall participate in the experimental harvest regime independently (i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

ANNEX 52-02/A

LOCATIONS OF FISHING AREAS FOR THE EXPERIMENTAL HARVEST REGIME OF THE EXPLORATORY CRAB FISHERY

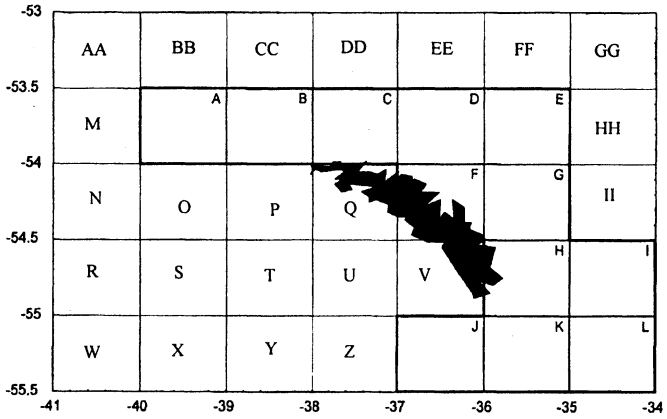

Figure 1: Operations area for Phase 1 of the experimental harvest regime for the crab fishery in Statistical Subarea 48.3.

Conservation Measure 61–01 (2006)

Limits on the exploratory fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in the 2006/07 season (Species: squid; Area: 48.3; Season: 2006/07; Gear: jig)

The Commission hereby adopts the following Conservation Measure in accordance with Conservation Measures 21–02 and 31–01:

Access 1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.

Catch Limit 2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2006/07 season shall not exceed a precautionary catch limit of 2,500 tonnes.

Season 3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2006/07 season is defined as the period from 1 December 2006 to 30 November 2007, or until the catch limit is reached, whichever is sooner.

Observers 4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

5. For the purpose of implementing this Conservation Measure in the 2006/07 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 23–02 and 23–04, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*

Data: Biological

7. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A. Data collected pursuant to the plan for the period up to 31 August 2007 shall be reported to CCAMLR by 30 September 2007 so that the data will be available to the meeting of the

Working Group on Fish Stock Assessment (WG–FSA) in 2007.

Environmental Protection

9. Conservation Measure 26–01 applies.

Annex 61–01/A

Data Collection Plan for Exploratory Squid (*Martialia Hyadesi*) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1)

(ii) catch information (Form S2)

(iii) biological data (Form S3).

Conservation Measure 91–01 (2004)

Procedure for according protection to CEMP sites

(Species: all; Area: general)

The Commission,

Bearing in mind that the Scientific Committee has established a system of sites contributing data to the CCAMLR Ecosystem Monitoring Program (CEMP), and that additions may be made to this system in the future,

Recalling that it is not the purpose of the protection accorded to CEMP sites to restrict fishing activity in adjacent waters,

Recognising that studies being undertaken at CEMP sites may be vulnerable to accidental or wilful interference,

Concerned, therefore, to provide protection for CEMP sites, scientific investigations and the Antarctic marine living resources therein, in cases where a Member or Members of the Commission conducting or planning to conduct CEMP studies believes such protection to be desirable,

hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. In cases where a Member or Members of the Commission conducting, or planning to conduct, CEMP studies at a CEMP site believe it desirable that protection should be accorded to the site, it, or they, shall prepare a draft management plan in accordance with Annex A to this Conservation Measure.

2. Each such draft management plan shall be sent to the Executive Secretary for transmission to all Members of the Commission for their consideration at least three months before its consideration by WG–EMM.

3. The draft management plan shall be considered in turn by WG–EMM, the Scientific Committee and the Commission. In consultation with the Member or Members of the Commission which drew up the draft management plan, it may be amended by any of these bodies. If a draft management plan is amended by either WG–EMM or the Scientific Committee, it shall be passed on in its amended form either to the Scientific Committee or to the Commission as the case may be.

4. If, following completion of the procedures outlined in paragraphs 1 to 3 above, the Commission considers it appropriate to accord the desired protection to the CEMP site, the Commission shall adopt a Resolution calling on Members to comply, on a voluntary basis, with the provisions of the draft management plan, pending the conclusion of action in accordance with paragraphs 5 to 8 below.

5. The Executive Secretary shall communicate such a Resolution to SCAR, the Antarctic Treaty Consultative Parties and, if appropriate, the Contracting Parties to other components of the Antarctic Treaty System which are in force.

6. Unless, before the opening date of the next regular meeting of the Commission, the Executive Secretary has received:

(i) an indication from an Antarctic Treaty Consultative Party that it desires the resolution to be considered at a Consultative Meeting; or

(ii) an objection from any other quarter referred to in paragraph 5 above;

the Commission may, by means of a Conservation Measure, confirm its adoption of the management plan for the CEMP site and shall include the management plan in Annex 91–01/A of that Conservation Measure.

7. In the event that an Antarctic Treaty Consultative Party has indicated its desire for the Resolution to be considered at a Consultative Meeting, the Commission shall await the outcome of such consideration, and may then proceed accordingly.

8. If objection is received in accordance with paragraphs 6(ii) or 7 above, the Commission may institute such consultations as it may deem appropriate to achieve the necessary protection and to avoid interference with the achievement of the principles and purposes of, and measures approved under, the Antarctic Treaty and other components of the Antarctic Treaty System which are in force.

9. The management plan of any site may be amended by decision of the Commission. In such cases full account shall be taken of the advice of the Scientific Committee. Any amendment which increases the area of the site or adds to categories or types of activities that would jeopardise the objectives of the site shall be subject to the procedures set out in paragraphs 5 to 8 above.

10. Entry into a CEMP site described by a Conservation Measure shall be prohibited except for the purposes authorised in the relevant management plan for the site and in accordance with a permit issued under paragraph 11.

11. Each Contracting Party shall, as appropriate, issue permits authorising its nationals to carry out activities consistent with the provisions of the management plans for CEMP sites and shall take such other measures, within its competence, as may be necessary to ensure that its nationals comply with the management plans for such sites.

12. Copies of such permits shall be sent to the Executive Secretary as soon as practical after they are issued. Each year the Executive Secretary shall provide the Commission and the Scientific Committee with a brief description of the permits that have been issued by the Parties. In cases where permits are issued for purposes not directly related to the conduct of CEMP studies at the site in question, the Executive Secretary shall forward a copy of the permit to the Member or Members of the Commission conducting CEMP studies at that site.

13. Each management plan shall be reviewed every five years by WG–EMM and the Scientific Committee to determine whether it requires revision and whether continued protection is necessary. The Commission may then act accordingly.

Annex 91–01/A

Information To Be Included in Management Plans for CEMP Sites

A. Geographical Information

1. A description of the site, and any buffer zone within the site, including:

1.1 geographical coordinates

1.2 natural features, including those that define the site

1.3 boundary markers

1.4 access points (pedestrian, vehicular, airborne, sea-borne)

1.5 pedestrian and vehicular routes

1.6 preferred anchorages

1.7 location of structures within the site
1.8 restricted areas within the site
1.9 location of nearby scientific stations or other facilities
1.10 location of areas or sites, in or near the site, which have been accorded protected status in accordance with measures adopted under the Antarctic Treaty or other components of the Antarctic Treaty System that are in force.

2. Maps, including the following elements where appropriate:

2.1 Essential features
- 2.1.1 Title
- 2.1.2 Latitude and longitude
- 2.1.3 Scale bar with numerical scale
- 2.1.4 Comprehensive legend
- 2.1.5 Adequate and approved place names
- 2.1.6 Map projection and spheroid modification (indicate beneath the scale bar)
- 2.1.7 North arrow
- 2.1.8 Contour interval
- 2.1.9 Date of map preparation
- 2.1.10 Map preparer
- 2.1.11 Date of image collection (where applicable)

2.2 Essential topographical features
- 2.2.1 Coastline, rock, and ice
- 2.2.2 Peaks and ridgelines
- 2.2.3 Ice margins and other glacial features, clear delineation between ice/snow and ice-free ground; if glacial features are part of the boundary, date of survey should be indicated
- 2.2.4 Contours (labelled as appropriate), survey points, and spot heights
- 2.2.5 Bathymetric contours of marine areas, with relevant bottom features if known

2.3 Natural features
- 2.3.1 Lakes, ponds, and streams
- 2.3.2 Moraines, screes, cliffs, beaches
- 2.3.3 Beach areas
- 2.3.4 Bird and seal concentrations or breeding colonies
- 2.3.5 Extensive areas of vegetation
- 2.3.6 Wildlife access areas to the sea

2.4 Anthropogenic features
- 2.4.1 Stations
- 2.4.2 Field huts, refuges
- 2.4.3 Campsites
- 2.4.4 Roads and vehicle tracks, footpaths, feature overlaps
- 2.4.5 Approach paths and landing areas for airplanes and helicopters
- 2.4.6 Approach paths and access points for boats (wharfs, jetties)
- 2.4.7 Power supplies, cables
- 2.4.8 Antennae
- 2.4.9 Fuel storage areas
- 2.4.10 Water reservoirs and pipes
- 2.4.11 Emergency caches
- 2.4.12 Markers, signs
- 2.4.13 Historic sites or artefacts, archaeological sites
- 2.4.14 Scientific installations or sampling areas
- 2.4.15 Site contamination or modification

2.5 Boundaries
- 2.5.1 Boundary of area
- 2.5.2 Boundaries of subsidiary zones and protected areas within the mapping area
- 2.5.3 Boundary signs and markers (including cairns)
- 2.5.4 Boat/aircraft approach routes
- 2.5.5 Navigation markers or beacons
- 2.5.6 Survey points and markers

2.6 Other mapping guidelines
- 2.6.1 Verify all features and boundaries by GPS if possible
- 2.6.2 Ensure visual balance among elements
- 2.6.3 Appropriate shading (shading should be distinguishable on a photocopy of the map)
- 2.6.4 Correct and appropriate text; no feature overlap
- 2.6.5 Appropriate legend; use SCAR approved map symbols when possible
- 2.6.6 Text appropriately shadowed on image data
- 2.6.7 Photographs may be used where appropriate
- 2.6.8 Official maps should be in black and white
- 2.6.9 Most likely two or more maps will be needed for a management plan, one showing the site and the vicinity, and one detailed map of the site showing features essential for the management plan objectives; other maps may be useful (i.e. geological map of the area, three dimensional terrain model).

B. Biological Features

1. A description of the biological features of the site, in both space and time, which it is the purpose of the management plan to protect.

C. CEMP Studies

1. A full description of the CEMP studies being conducted or planned to be conducted, including the species and parameters which are being or are to be studied.

D. Protection Measures

1. Statements of prohibited activities:
1.1 throughout the site at all times of the year
1.2 throughout the site at defined parts of the year
1.3 in parts of the site at all times of the year
1.4 in parts of the site at defined parts of the year.

2. Prohibitions regarding access to and movement within or over the site.

3. Prohibitions regarding:
3.1 the installation, modification, and/or removal of structures
3.2 the disposal of waste.

4. Prohibitions for the purpose of ensuring that activity in the site does not prejudice the purposes for which protection status has been accorded to areas or sites, in or near the site, under the Antarctic Treaty or other components of the Antarctic Treaty System which are in force.

E. Communications Information

1. The name, address, telephone and facsimile numbers, and e-mail addresses, of:
1.1 the organisation or organisations responsible for appointing national representative(s) to the Commission;
1.2 the national organisation or organisations conducting CEMP studies at the site.

Notes:

1. A code of conduct. If it would help towards achieving the scientific objectives of the site, a code of conduct may be annexed to the management plan. Such a code should be written in hortatory rather than mandatory terms, and must be consistent with the prohibitions contained in Section D above.

2. Members of the Commission preparing draft management plans for submission in accordance with this Conservation Measure should bear in mind that the primary purpose of the management plan is to provide for the protection of CEMP studies at the site through the application of the prohibitions contained in Section D. To that end, the management plan is to be drafted in concise and unambiguous terms. Information which is intended to help scientists, or others, appreciate broader considerations regarding the site (e.g. historical and bibliographic information) should not be included in the management plan but may be annexed to it.

Conservation Measure 91–02 (2004)

Protection of the Cape Shirreff CEMP site
(Species: all; Area: 48.1)

1. The Commission noted that a program of long-term studies is being undertaken at Cape Shirreff and the San Telmo Islands, Livingston Island, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognising that these studies may be vulnerable to accidental or wilful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and

the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Cape Shirreff CEMP site, as defined in the Cape Shirreff management plan.

3. Members shall comply with the provisions of the Cape Shirreff CEMP site management plan, which is recorded in Annex 91–02/A.

4. In accordance with Article X, the Commission shall draw this Conservation Measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Annex 91–02/A

Management Plan for the Protection of Cape Shirreff and the San Telmo Islands, South Shetland Islands, as a Site Included in the CCAMLR Ecosystem Monitoring Program [1]

A. Geographical Information

1. Description of the site:

(a) Geographical coordinates: Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at latitude 62°27′S, longitude 60°47′W, between Barclay Bay and Hero Bay. San Telmo Islands are the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff.

(b) Natural features: Cape Shirreff is approximately 3 km from north to south and 0.5 to 1.2 km from east to west. The site is characterised by many inlets, coves and cliffs. Its southern boundary is bordered by a permanent glacial ice barrier, which is located at the narrowest part of the cape. The cape is mainly an extensive rock platform, 46 to 83 m above sea level, the bedrock being largely covered by weathered rock and glacial deposits. The eastern side of the base of the cape has two beaches with a total length of about 600 m. The first is a boulder beach, the second of sand. Above this is a raised beach with mosses and lichens, crossed by melt-streams from the snow above. The extremity of the cape has a rocky barrier about 150 m long. The western side is formed by almost continuous cliffs 10 to 15 m high above an exposed coast with a few protected beaches. At the southwestern base of the cape is a small sandy and pebble beach approximately 50 m long.

The San Telmo Islands are located approximately 2 km west of Cape Shirreff, and are a group of ice-free, rocky islets. The east coast of San Telmo Island (the largest of the group) has a sandy and pebble beach (60 m) at the south end, separated from the northern sandy beach (120 m) by two irregular cliffs (45 m) and narrow pebble beaches.

(c) Boundary markers: The boundaries of the Cape Shirreff CEMP Protected Area are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV–7. At present, there are no man-made boundary markers indicating the limits of the SSSI or established protected areas. The boundaries of the site are defined by natural features (i.e. coastlines, glacial margins) described in Section A.1(d).

(d) Natural features that define the site: The Cape Shirreff CEMP Protected Area includes the entire area of the Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Islands group. For the purposes of the CEMP protected area, 'the entire area' of Cape Shirreff and the San Telmo Islands group is defined as any land or rocks exposed at mean low tide within the area delimited by the map (Figure 3).

(e) Access points: The Cape Shirreff part of the CEMP site may be entered at any point where pinniped or seabird rookeries are not present on or near the beach. Access to the island in the San Telmo group is unrestricted but should be at the least densely populated areas and cause minimal disturbance to the fauna. Access for other than CEMP research should avoid disturbing pinnipeds and seabirds (see Sections D.1 and D.2). Access by small boat or helicopter is recommended in most circumstances. Four helicopter landing areas are recommended including: (i) The south plain of Playa Yámana, which is situated on the Southwest coast of the cape; (ii) on the west coast of the cape, on the top plain of Gaviota Hill (10x20 m), near the monument erected to commemorate the officers and crew of the Spanish ship *San Telmo;* (iii) the wide plain, Paso Ancho, situated to the east of Cóndor Hill; and (iv) the top plain of Cóndor Hill. Recommended sites for landing small boats include: (i) The northern end of Half Moon beach, on the east coast of the cape; (ii) on the east coast, 300 m north of El Mirador, there is a deep channel which permits easy disembarkation; and (iii) the northern end of Playa Yámana on the west coast of the cape (during high tide conditions). There are no landing sites for fixed-wing aircraft.

(f) Pedestrian and vehicular routes: Boats, helicopters, fixed-wing aircraft and land vehicles should avoid the site except for operations directly supporting authorised scientific activities. During these operations, boats and aircraft should travel routes that avoid or minimise disturbance of pinnipeds and seabirds. Land vehicles should not be used except to transport needed equipment and supplies to and from the field camps. Pedestrians should not walk through wildlife population areas, especially during the breeding season, or disturb other fauna or flora except as necessary to conduct authorised research.

(g) Preferred anchorages: Numerous shoals and pinnacles are known to exist in the vicinity of Cape Shirreff and the San Telmo Islands. The detailed bathymetric chart No. 14301 produced by the Servicio Hidrográfico y Oceanográfico de la Armada de Chile (SHOA, 1994) provides guidance but those unfamiliar with local conditions at Cape Shirreff are advised to approach the area with caution. Three anchorages that have been used in the past are: (i) Northwest coast—situated between Rapa-Nui Point on Cape Shirreff and the northern extremity of the San Telmo Islands; (ii) east coast—2.5 km to the east of El Mirador, being alert for icebergs drifting in the area; and (iii) south coast—located about 4 km off the southern coast of Byers Peninsula to support ship-based helicopter operations. Organisation(s) conducting CEMP studies at the site can provide further details about sailing instructions pertaining to recommended anchorages (see Section E.2).

(h) Location of structures within the site: During the 1991/92 austral summer, a fibreglass cabin for four people was installed by the Instituto Antártico Chileno (INACH) (Anonymous, 1992) in the El Mirador area. This area is on the cape's east coast, at the base of Condor Hill (near the site of the previous installation of the former Soviet Union). This site was chosen because of its accessibility by helicopter and boat, shelter from winds, good water supply and absence of seal or bird colonies. During the 1996/97 austral summer a U.S. AMLR field camp was established approximately 50 m to the south of the INACH camp. The U.S. camp is comprised of four small wood-constructed buildings (including an outhouse); all within 3 m of each other and jointed by wooden walkways. In February 1999 an emergency shelter/bird observation blind was constructed by the U.S. program at the northern end of the Cape. Minor remains of a hut used in the past by the former Soviet Union as well as sparse evidence of a 19th century sealers' camp can be found near the camp site.

[1] As adopted at CCAMLR–XVIII (paragraphs 9.5 and 9.6), and revised at CCAMLR–XIX (paragraph 9.9).

(i) Areas within the site where activities are constrained: The protection measures specified in Section D apply to all areas within the Cape Shirreff CEMP Protected Area, as defined in Section A.1(d).

(j) Location of nearby scientific, research, or refuge facilities: The nearest research facility to the site is Juan Carlos I Station (summer only) maintained by the Spanish government at South Bay, Livingston Island, (62°40′S, 60°22′W), approximately 30 km southeast of Cape Shirreff. The Chilean Station Arturo Prat is located on Greenwich Island (62°30′S, 59°41′W) approximately 56 km northeast of Cape Shirreff. Numerous scientific stations and research facilities (e.g. Argentina, Brazil, Chile, China, Korea, Poland, Russia, Uruguay) are located on King George Island, approximately 100 km northeast of Cape Shirreff. The largest of these facilities is Base Presidente Eduardo Frei Montalva (also formerly referred to as Base Teniente Rodolfo Marsh Martin), maintained by the Chilean government on the western end of King George Island (62°12′S, 58°55′W).

(k) Areas or sites protected under the Antarctic Treaty System: Cape Shirreff and the San Telmo Islands are protected as a Site of Special Scientific Interest (No. 32) under the Antarctic Treaty System (see Section A.1(c)). Several other sites or areas within 100 km of Cape Shirreff are also protected under the Antarctic Treaty System: SSSI No. 5, Fildes Peninsula (62°12′S, 58°59′W); SSSI No. 6, Byers Peninsula (62°38′S, 61°05′W); SSSI No. 35, Ardley Island, Maxwell Bay, King George Island (62°13′S, 58°56′W); Marine SSSI No. 35, Western Bransfield Strait (63°20′S to 63°35′S, 61°45′W to 62°30′W); and SPA No. 16, Coppermine Peninsula, Robert Island (62°23′S, 59°44′W). The Seal Islands CEMP Protected Area (60°59′14″ S, 55°23′04″ W) is located approximately 325 km northeast of Cape Shirreff.

2. Maps of the site:

(a) Figures 1 and 2 show the geographical position of Cape Shirreff and the San Telmo Islands in relation to major surrounding features, including the South Shetland Islands and adjacent bodies of water.

(b) Figure 3 identifies the boundaries of the site and provides details of specific locations within the vicinity of Cape Shirreff and the San Telmo Islands, including preferred vessel anchorages.

B. Biological Features

1. Terrestrial: There is no information on soil biology of Cape Shirreff but it is likely that similar types of plants and invertebrates are found as at other sites in the South Shetland Islands (e.g. see Lindsey, 1971; Allison and Smith, 1973; Smith, 1984; Sömme, 1985). A moderate lichen cover (e.g. *Polytrichum alpestre, Usnea fasciata*) is present on rocks located in the higher geological platforms. In some valleys there are patches of moss and grass (e.g. *Deschampsia antarctica*).

2. Inland waters: There are several ephemeral ponds and streams located at Cape Shirreff. These form from melting snow, especially in January and February. Hidden Lake is the only permanent body of water on the cape, and it is located in the confluence of the slope of three hills: El Toqui, Pehuenche and Aymara. The lake's drainage supports the growth of moss banks along its northeast and southwest slopes. From the southwest slope a stream flows to the western coast at Playa Yámana. The lake's depth is estimated at two to 3 m and it is approximately 12 m long when fullest; the lake diminishes considerably in size after February (Torres, 1995). There are no known lakes or ephemeral ponds of significance on the San Telmo Islands.

3. Marine: No studies on littoral communities have been carried out. There is abundant macroalgae present in the intertidal zone. The limpet *Nacella concinna* is common, as elsewhere in the South Shetland Islands.

4. Seabirds: In January 1958, 2000 pairs of chinstrap penguins (*Pygoscelis antarctica*) and 200 to 500 pairs of gentoo penguins (*P. papua*) were reported (Croxall and Kirkwood, 1979). In 1981 two unspecified penguin colonies had 4,328 and 1,686 individuals respectively (Sallaberry and Schlatter, 1983). A census in January 1987, produced estimates of 20,800 adult chinstrap penguins and 750 adult gentoo penguins (Shuford and Spear, 1987). Hucke-Gaete et al. (1997a) identified the presence of 31 breeding colonies for both species during 1996/97 and reported estimates of 6,907 breeding pairs of chinstrap penguins and 682 of gentoo penguins. A chick census developed in early February that same year gave a total of 8,802 chinstrap penguins and 825 gentoo penguins. The first of a continuing CCAMLR census of the colonies at Cape Shirreff conducted on 3 December, 1997 recorded 7617 and 810 breeding pairs of chinstrap and gentoo penguins, respectively (Martin 1998). Dominican gulls (*Larus domincanus*), brown skuas (*Catharacta lönnbergi*), Antarctic terns (*Sterna vittata*), blue-eyed shags (*Phalacrocorax atriceps*), cape petrels (*Daption capense*), Wilson's storm petrels (*Oceanites oceanicus*) and black-bellied storm petrel (*Fregetta tropica*) also nest on the cape. Giant petrels (*Macronectes giganteus*) are regular visitors during the austral summer (Torres, 1995).

5. Pinnipeds: Cape Shirreff is presently the site of the largest known breeding colony of the Antarctic fur seal (*Arctocephalus gazella*) in the South Shetland Islands. The first post-exploitation record of fur seals at Cape Shirreff was reported by O'Gorman (1961) in mid-February 1958 when 27 non-breeding adults were seen. Over the past 30 years, the colony has continued to increase in size (Aguayo and Torres, 1968, 1993; Bengtson et al., 1990, Torres, 1995; Hucke-Gaete et al., 1999). Annual censuses begun in 1991/92 by INACH scientists showed that pup production has increased every year except for 1997/98 when there was an apparent 14% decrease in the entire SSSI. From 1965/66 to 1998/99 the population increased at a rate of 19.8%. However, from 1992/93 to 1998/99 the growth rate has decreased to ca. 7% per year, with the last census in 1998/99 reporting 5,497 pups born on Cape Shirreff and 3,027 pups born on San Telmo Islands (Hucke-Gaete et al., 1999). Groups of non-breeding southern elephant seals (*Mirounga leonina*), Weddell seals (*Leptonychotes weddelli*), leopard seals (*Hydrurga leptonyx)* and crabeater seals (*Lobodon carcinophagus*) have been observed on the cape (O'Gorman, 1961; Aguayo and Torres, 1967; Bengtson et al., 1990; Torres et al., 1998). Additionally, observations of pup carcasses suggest breeding sites of southern elephant seals (Torres, 1995).

CEMP Studies

1. The presence at Cape Shirreff of both Antarctic fur seal and penguin breeding colonies, and of krill fisheries within the foraging range of these species, make this a critical site for inclusion in the ecosystem monitoring network established to help meet the objectives of the Convention on the Conservation of Antarctic Marine Living Resources. The purpose of the designation is to allow planned research and monitoring to proceed, while avoiding or reducing, to the greatest extent possible, other activities which could interfere with or affect the results of the research and monitoring program or alter the natural features of the site.

2. The following species are of particular interest for CEMP routine monitoring and directed research at this site: Antarctic fur seals, chinstrap penguins and gentoo penguins.

3. Long-term studies are under way to assess and monitor the feeding ecology, growth and condition, reproductive success, behaviour, and population

dynamics of pinnipeds and seabirds that breed in the area. The results of these studies will be compared with environmental data, wildlife diseases, offshore sampling data, and fishery statistics to identify possible cause-effect relationships.

4. Chilean scientists have been conducting studies at the site for many years and in recent seasons they have developed studies specifically designed to contribute to CEMP. These studies have mainly focused on Antarctic fur seals, wildlife diseases and survey of marine debris. Annual marine debris surveys began in 1985, with a baseline established in 1994 (e.g. Torres and Jorquera 1995, 1999). In 1996/97 U.S. scientists began CEMP monitoring studies of Antarctic fur seals, chinstrap and gentoo penguins in conjunction with studies of offshore prey distribution and general oceanography (e.g. Martin, 1999).

5. Penguin parameters routinely monitored include trends in population size (A3), demography (A4), duration of foraging trips (A5), breeding success (A6), chick fledging weight (A7), chick diet (A8) and breeding chronology (A9). Studies of fur seals include foraging energetics, at-sea foraging locations using satellite-linked telemetry, diving behaviour, diet studies, duration of foraging trips (C1), reproductive success, and pup growth rates (C2).

D. Protection Measures

1. Prohibited activities and temporal constraints:

(a) Throughout the site at all times of the year: Any activities which damage, interfere with, or adversely affect the planned CEMP monitoring and directed research at this site are not permitted.

(b) Throughout the site at all times of the year: Any non-CEMP activities are not permitted which result in:

(i) killing, injuring, or disturbing pinnipeds or seabirds;

(ii) damaging or destroying pinniped or seabird breeding areas; or

(iii) damaging or destroying the access of pinnipeds or seabirds to their breeding areas.

(c) Throughout the site at defined parts of the year: Human occupation of the site during the period 1 June to 31 August is not permitted except under emergency circumstances.

(d) In parts of the site at all times of the year: Building structures within boundaries of any pinniped or seabird colony is not permitted. For this purpose, colonies are defined as the specific locations where pinniped pups are born or where seabird nests are built. This prohibition does not pertain to placing markers (e.g. numbered stakes, posts, etc.) or situating research equipment in colonies as may be required to facilitate scientific research.

(e) In parts of the site at defined parts of the year: Entry into any pinniped or seabird colonies during the period 1 September to 31 May is not permitted except in association with CEMP activities.

2. Prohibitions regarding access to and movement within the site:

(a) Entry to the site at locations where pinniped or seabird colonies are present in densely populated areas is not permitted.

(b) Aircraft overflight of the site is not permitted at altitudes less than 1,000 m unless the proposed flight plan has been reviewed in advance by the organisation(s) conducting CEMP activities at the site (see Section E.2). Aircraft overflight at altitudes below 200 m is not permitted.

(c) The use of land vehicles is not permitted except to transport needed equipment and supplies to and from the field camps.

(d) Pedestrians are not permitted to walk through wildlife population areas (*e.g.* colonies, resting areas, pathways), or to disturb other fauna or flora, except as necessary to conduct authorised research.

3. Prohibitions regarding structures:

(a) Building structures other than those directly supporting authorised scientific research and monitoring programs or to house research personnel and their equipment is not permitted.

(b) Human occupation of these structures is not permitted during the period 1 June to 31 August (see Section D.1(c)).

(c) New structures are not permitted to be built within the site unless the proposed plans have been reviewed in advance by the organisation(s) conducting CEMP activities at the site (see Section E.2).

4. Prohibitions regarding waste disposal:

(a) Landfill disposal of any materials is not permitted; all materials brought to the site are to be removed when no longer in use.

(b) Disposal of waste fuels, volatile liquids and scientific chemicals within the site is not permitted; these materials are to be removed from the site for proper disposal elsewhere.

(c) The open burning of any materials is not permitted (except for properly used fuels for heating, lighting or cooking).

5. Prohibitions regarding the Antarctic Treaty System:

It is not permitted to undertake any activities in the Cape Shirreff CEMP Protected Area which are not in compliance with the provisions of: (i) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora and the Protocol on Environmental Protection, (ii) the Convention for the Conservation of Antarctic Seals, and (iii) the Convention for the Conservation of Antarctic Marine Living Resources.

E. Communications Information

1. Organisation(s) appointing national representatives to the Commission.

(a) Ministerio de Relaciones Exteriores, Direccion de Medio Ambiente (DIMA), Catedral 1143, 2°Piso, Santiago, Chile. Telephone: +56 (2) 679 4720. Facsimile: +56 (2) 673 2152. E-mail: *mlcarvallo@minrel.gov.cl*

(b) Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State, Washington DC 20520, USA. Telephone: +1 (202) 647 3262. Facsimile: +1 (202) 647 1106.

2. Organisation(s) conducting CEMP studies at the site.

(a) Ministerio de Relaciones Exteriores, Instituto Ant´rtico Chileno, Plaza Muñoz Gamero 1055, Punta Arenas, Chile. Telephone: +56 (61) 29 8100. Facsimile: +56 (61) 29 8149. E-mail: *vvallejos@inach.cl*

(b) US Antarctic Marine Living Resources Program, National Marine Fisheries Service, NOAA, Southwest Fisheries Science Center, PO Box 271, La Jolla CA 92038, USA. Telephone: +1 (858) 546 5601. Facsimile: +1 (858) 546 5608. E-mail: *rennie.holt@noaa.gov*

Annex 91–02/A Cape Shirreff, Appendix 1

Code of Conduct for the Cape Shirreff Cemp Protected Area

Investigators should take all reasonable steps to ensure that their activities, both in implementing their scientific protocols as well as in maintaining a field camp, do not unduly harm or alter the natural behaviour and ecology of wildlife. Wherever possible, actions should be taken to minimise disturbance of the natural environment.

Killing, capturing, handling and taking eggs, blood, or other biological samples from pinniped and seabirds should be limited to that necessary to characterise and monitor individual and population parameters that may change in detectable ways in response to changes in food availability or other environmental factors. Sampling should be done and reported in accordance with: (i) The Agreed Measures for the Conservation of Antarctic Fauna and Flora and the Protocol on Environmental Protection, (ii) the

Convention for the Conservation of Antarctic Seals, and (iii) the Convention for the Conservation of Antarctic Marine Living Resources.

Geological, glaciological and other studies which can be done outside of the pinniped and seabird breeding season, and which will not damage or destroy pinniped or seabird breeding areas, or access to those areas, would not adversely affect the planned assessment and monitoring studies. Likewise, the planned assessment and monitoring studies would not be affected adversely by periodic biological surveys or studies of other species which do not result in killing, injuring, or disturbing pinnipeds or seabirds, or damage or destroy pinnipeds or seabird breeding areas or access to those areas.

Annex 91–02/A Cape Shirreff, Appendix 2

Background Information Concerning Cape Shirreff

Prior to 1819, there were substantial colonies of fur seals, and possibly elephant seals, throughout the South Shetland Islands archipelago. Thereafter, Cape Shirreff was the scene of more intensive sealing activities until about 1825. Sealers' refuges were erected all around the western shores of Livingston Island, with those on the south coast being occupied mainly by American sealers and those on the north coast by British sealers. There were about 60 to 75 men living ashore at Cape Shirreff in January 1821 (Stackpole, 1955) and 95,000 skins were taken during the 1821/22 season (O'Gorman, 1963). There are ruins of at least 12 sealers' huts on the cape and the shoreline in several bays is littered with timbers and sections of wrecked sealers' vessels (Torres, 1995). The outcome of the sealing of the early 1820s was the extermination of fur seals from the entire region. Antarctic fur seals were not observed again in the South Shetland Islands until 1958, when a small colony was discovered at Cape Shirreff, Livingston Island (O'Gorman, 1961). The original colonisers probably came from South Georgia, where surviving fur seal colonies had substantially recovered by the early 1950s. Chilean studies at the site began in 1965 (e.g. Aguayo and Torres, 1967, 1968) and U.S. studies began in 1996 (e.g. Martin, 1998). At present, the fur seal rookeries at Cape Shirreff and the San Telmo Islands are the largest in the South Shetland Islands.

Annex 91–02/A Cape Shirreff, Appendix 3

History of Protection at Cape Shirreff

Cape Shirreff was designated in 1966 as Specially Protected Area (SPA) No. 11 by ATCM Recommendation IV–11 'on the grounds that the cape supports a considerable diversity of plant and animal life, including many invertebrates, that a substantial population of elephant seals (*Mirounga leonina*) and small colonies of Antarctic fur seals are found on the beaches and that the area is of outstanding interest'. The protection conferred on this site was successful in ensuring that Antarctic fur seals were not disturbed during the important early phases of their recolonisation. Subsequent to the site's designation as a SPA, the locally breeding population of Antarctic fur seals increased to a level at which biological research activities could be undertaken without threatening the continued recolonisation and population increase of this species.

Surveys during the mid-1980s to locate study sites for long-term monitoring of fur seal and penguin populations as part of the CCAMLR Ecosystem Monitoring Program (CEMP) indicated that Cape Shirreff would be an excellent site within the Antarctic Peninsula Integrated Study Region. To carry out such a monitoring program safely and effectively, a multi–year field camp for four to six researchers was needed within the area previously designated as SPA No. 11. This might have been considered inappropriate within a SPA and hence a proposal was made in 1988 to redesignate Cape Shirreff as a Site of Special Scientific Interest (SSSI). Additionally, it was proposed substantially to enlarge the site by the inclusion of the San Telmo Islands group, presently the location of the largest fur seal colony in the Antarctic Peninsula region.

Cape Shirreff was redesignated in 1990 as SSSI No. 32 by Recommendation XV–7, which was adopted by the XVth Consultative Meeting of the Antarctic Treaty. It was understood that SSSI No. 32, Cape Shirreff, should be redesignated an SPA (in its enlarged form) if and when the long-term monitoring of fur seals and seabirds at the site should be ended. Chilean and U.S. scientists initiated CEMP studies at Cape Shirreff during the late 1980s, and have collaborated on predator studies at Cape Shirreff since 1996/97. To further protect the site from damage or disturbance that could adversely affect the long-term CEMP monitoring and directed research, in 1991 Cape Shirreff was proposed as a CEMP Protected Area.

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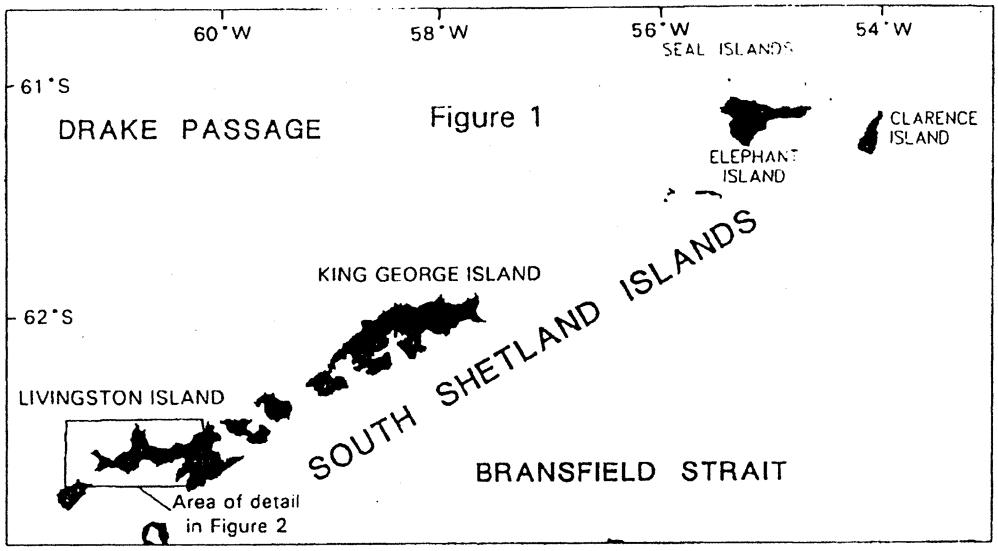

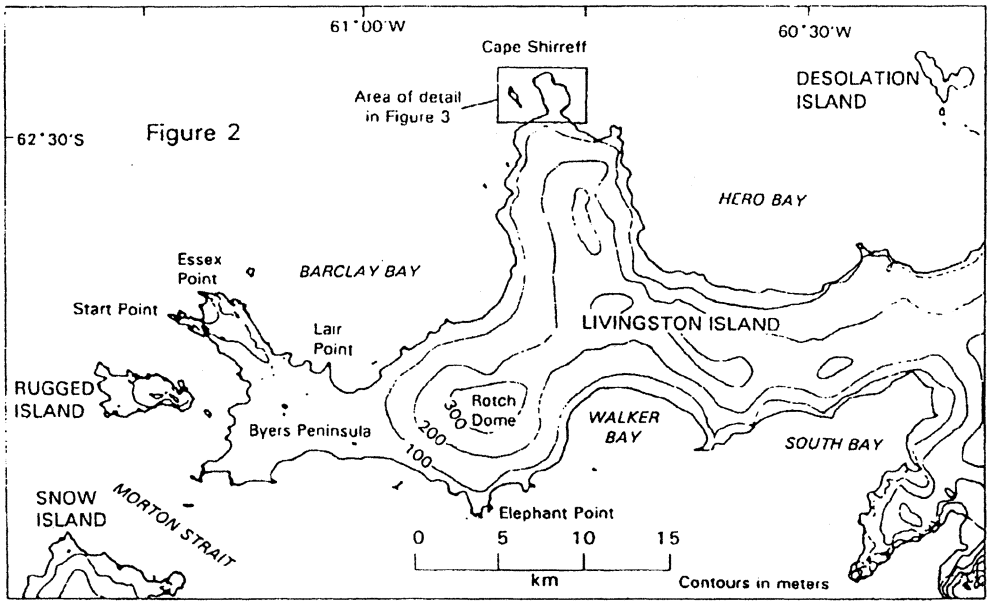

Figures 1 and 2: These maps show the general position of Cape Shirreff and the San Telmo Islands CEMP Protected Area (Figure 1) and the location of the CEMP Protected Area in relation to the northwestern portion of Livingston Island.

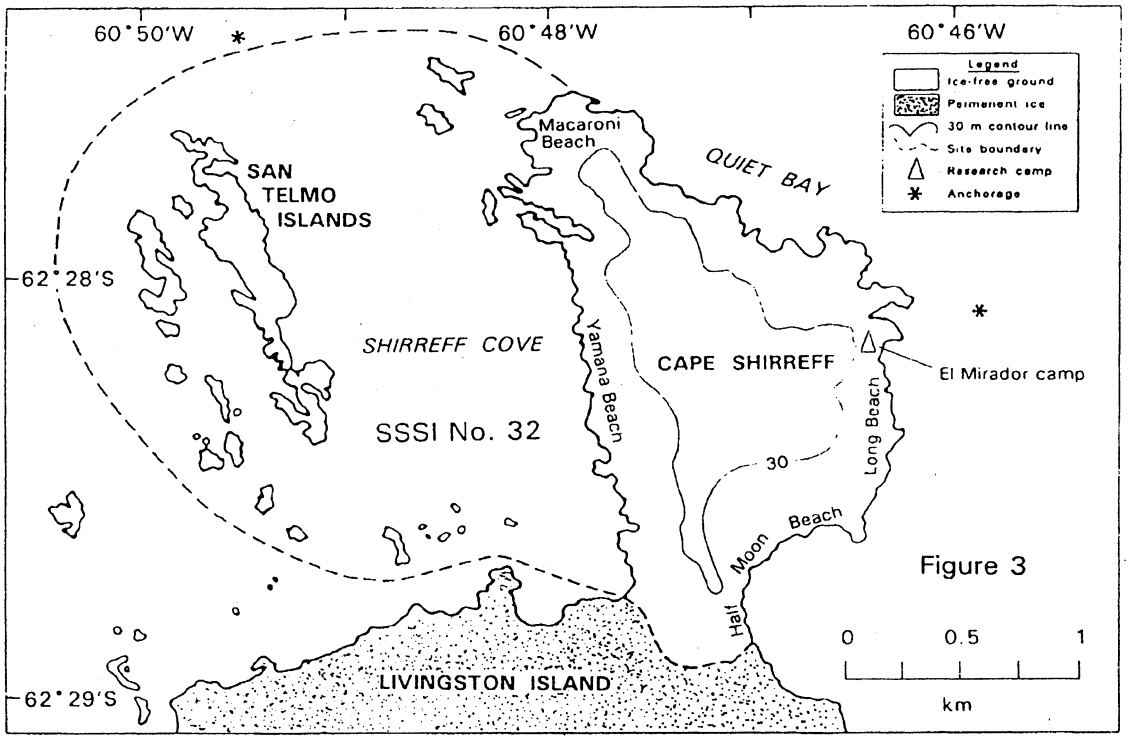

Figure 3: This map shows a detailed view of the Cape Shirreff and the San Telmo Islands CEMP Protected Area. Note that the boundaries of the CEMP Protected Area are identical to the boundaries of Site of Special Scientific Interest No. 32, which is protected under the Antarctic Treaty.

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Conservation Measure 91–03 (2004)

Protection of the Seal Islands CEMP site (Species: all; Area: 48.1)

1. The Commission noted that a program of long-term studies is being undertaken at Seal Islands, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognising that these studies may be vulnerable to accidental or willful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Seal Islands CEMP site, as defined in the Seal Islands management plan.

3. Members are required to comply with the provisions of the Seal Islands CEMP site management plan, which is recorded in Annex 91–03/A.

4. In accordance with Article X, the Commission shall draw this Conservation Measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Annex 91–03/A

Management Plan for the Protection of Seal Islands, South Shetland Islands, as a Ecosystem Monitoring Program [1]

A. Geographical Information

1. Description of the site:

(a) Geographical coordinates: The Seal Islands are composed of small islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Area includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is the largest island of the group, and is situated at 60°59′14″ S, 55°23′04″ W (coordinates are given for the point of highest elevation on the island—see Figures 1 and 2).

(b) Natural features: The Seal Islands cover an area approximately 5.7 km from east to west and 5 km from north to south. Seal Island is approximately 0.7 km long and 0.5 km wide. It has an altitude of about 125 m, with a raised plateau at about 80 m, and precipitous cliffs on most coastlines. There is a raised, sandy beach on the western shore and several coves on the northern and eastern shores. Seal Island is joined to the adjacent island to the west by a narrow sand bar that is approximately 50 m long; the bar is rarely passable on foot, and only when seas are calm and the tide is very low. Other islands in the group are similar to Seal Island, with precipitous cliffs, exposed coasts, and a few sand beaches and protected coves. There is no permanent ice on any of the islands. Seal Island is mainly composed

[1] As adopted at CCAMLR–XVI (paragraphs 9.67 and 9.68), and revised at CCAMLR–XIX (paragraph 9.9)

of poorly consolidated sedimentary rocks. Rocks crumble and fracture easily, resulting in prevalent erosion from water runoff and coastal wave action. Geologists have characterised the bedrock 'pebbly mudstone'. No fossils have been reported from the site. Because colonies of penguins are present in virtually all sectors of Seal Island (including the summit), the soil in many areas as well as several vertical rock faces are enriched by guano.

(c) Boundary markers: As of 1997, no man-made boundary markers indicating the limits of the protected area had been established. The boundaries of the site are defined by natural features (i.e. coastlines).

(d) Natural features that define the site: The Seal Islands CEMP Protected Area includes the entire Seal Islands group (see Section A.1(a) for definition). No buffer zones are defined for the site.

(e) Access points: The site may be accessed by boat or aircraft at any point where pinnipeds and seabirds will not be adversely affected (see Sections D.1 and D.2). Access by small boat is recommended in most circumstances because the number of beach landing spots for helicopters (which must approach these spots by flying over water rather than over land) is very limited. There are no landing sites for fixed-winged aircraft.

(f) Pedestrian and vehicular routes: Pedestrians should follow the advice of the local scientists in selecting pathways which will minimise disturbance to wildlife (see Section D.2(d)). Land vehicles are not permitted except in the immediate vicinity of the field camp and the beach (see Section D.2(c)).

(g) Preferred anchorages: Numerous shoals and pinnacles are known to exist in the vicinity of the Seal Islands, and navigation charts of the area are incomplete. Most ships visiting the area recently have preferred an anchorage spot approximately 1.5 km to the southeast of Seal Island (Figure 2), which has a rather consistent depth of approximately 18 m. A second anchorage utilised by smaller vessels is located approximately 0.5 km to the northeast of Seal Island (Figure 2) at a depth of about 20 m. Organisation(s) conducting CEMP studies at the site can provide further details about sailing instructions pertaining to these anchorages (see Section E.2).

(h) Location of structures within the site: As of March 1999 no structures remained on Seal Island. Between 1996 and 1999, all structures were dismantled and retrograded from the island.

(i) Areas within the site where activities are constrained: The protection measures specified in Section D apply to all areas within the Seal Islands Protected Area, as defined in Section A.1(d).

(j) Location of nearby scientific research or refuge facilities: The nearest research facility to the site is the scientific field camp maintained by the Brazilian government at Stinker Point, Elephant Island (61°04′ S, 55°21′ W), which is approximately 26 km south of Seal Island. However in some years this site is not occupied. Numerous scientific stations and research facilities are located on King George Island, which is approximately 215 km southwest of Seal Island.

(k) Areas or sites protected under the Antarctic Treaty System: No areas or sites within or near (i.e. within 100 km) the Seal Island Protected Area have been accorded protected status in accordance with measures adopted under the Antarctic Treaty or other components of the Antarctic Treaty System which are in force.

2. Maps of the site:

(a) Figure 1 shows the geographical position of the Seal Islands in relation to major surrounding features, including the South Shetland Islands and adjacent bodies of water.

(b) Figure 2 illustrates the location of the entire Seal Islands archipelago and preferred vessel anchorages. The detailed insert of Seal Island in Figure 2 shows the location of structures associated with CEMP studies and the location of the point of highest elevation (indicated by a cross).

B. Biological Features

1. Terrestrial: There is no information on soil biology at Seal Island but it is likely that similar types of plants and invertebrates are found as at other sites in the South Shetland Islands. Lichens are present on stable rock surfaces. There is no evidence of well-developed moss or grass banks being present on Seal Island.

2. Inland waters: There are no known lakes or ephemeral ponds of significance on Seal Island.

3. Marine: No studies on littoral communities have been carried out.

4. Birds: Seven species of birds are known to breed on the Seal Islands: chinstrap penguins (*Pygoscelis antarctica*), macaroni penguins (*Eudyptes chrysolophus*), Cape petrels (*Daption capense*), Wilson's storm petrels (*Oceanites oceanicus*), southern giant petrels (*Macronectes giganteus*), southern black-backed gulls (*Larus dominicanus*) and American Sheathbills (*Chionis alba*). The chinstrap penguin population on Seal Island numbers approximately 20,000 breeding pairs, nesting in about 60 colonies throughout the island. About 350 pairs of macaroni penguins nest on Seal Island in five separate colonies. The nesting and chick-rearing period for chinstrap and macaroni penguins at Seal Island extends from November to March. No surveys have been made of Cape petrel or storm petrel populations, however, both species are numerous; the Cape petrels nest on cliff faces and the storm petrels nest in burrows in the talus slopes. Brown skuas (*Catharacta lnnbergi*) are common. Blue-eyed shags (*Phalacrocorax atriceps*), Adélie penguins (*Pygoscelis adeliae*), gentoo penguins (*Pygoscelis papua*), king penguins (*Aptenodytes patagonicus*) and rockhopper penguins (*Eudyptes chrysocome*) are among the avian visitors to the area.

5. Pinnipeds: Five species of pinnipeds have been observed at Seal Island: Antarctic fur seals (*Arctocephalus gazella*), southern elephant seals (*Mirounga leonina*), Weddell seals (*Leptonychotes weddellii*), leopard seals (*Hydrurga leptonyx*) and crabeater seals (*Lobodon carcinophagus*). Of these, fur seals are the only confirmed breeders on the island, although small numbers of elephant seals probably breed on the island early in the spring. During the last few years approximately 600 fur seal pups have been born in the Seal Islands group, with approximately half of these born on Seal Island and half on Large Leap Island (Figure 2). The fur seal pupping and pup-rearing period at Seal Island extends from late November to early April. During the austral summer, elephant seals are ashore during their moult period; Weddell seals regularly haul out on the beaches; crabeater seals are infrequent visitors; and leopard seals are common both ashore and in coastal waters where they prey on penguins and fur seal pups.

C. CEMP Studies

1. The presence at the Seal Islands of both Antarctic fur seal and penguin breeding colonies, as well as significant commercial krill fisheries within the foraging range of these species make this an excellent site for inclusion in the CEMP network of sites established to help meet CCAMLR objectives. However, recent geological assessments of Seal Island have indicated that soil composition of cliff areas above and around the camp site are unstable and might result in catastrophic failure during periods of intense rainfall. Therefore, in 1994 the AMLR Program terminated its research at Seal Island

and between 1996 and 1999 dismantled and retrograded all camp and observation blind structures.

2. No CEMP studies are being conducted at Seal Island and the USA has no plans to occupy the site in the future except to conduct seal and bird censuses.

D. Protection Measures

1. Prohibited activities and temporal constraints:

(a) Throughout the site at all times of the year. Any activities which damage, interfere with, or adversely affect CEMP monitoring and directed research which potentially could be conducted at this site are not permitted.

(b) Throughout the site at all times of the year. Any non-CEMP activities are not permitted which result in:

(i) Killing, injuring, or disturbing pinnipeds or seabirds;

(ii) Damaging or destroying pinniped or seabird breeding areas; or

(iii) Damaging or destroying the access of pinnipeds or seabirds to their breeding areas.

(c) Throughout the site at defined parts of the year: Human occupation of the site during the period 1 June to 31 August is not permitted except under emergency circumstances.

(d) In parts of the site at all times of the year: Building structures within the boundaries of any pinniped or seabird colony is not permitted. For this purpose, colonies are defined as the specific locations where pinniped pups are born or where seabird nests are built. This prohibition does not pertain to placing markers (e.g. numbered stakes, posts etc.) or situating research equipment in colonies as may be required to facilitate scientific research.

(e) In parts of the site at defined parts of the year: Entry into any pinniped or seabird colonies during the period 2 September to 31 May is not permitted except in association with CEMP activities.

2. Prohibitions regarding access to and movement within or over the site:

(a) Entry of the site at locations where pinniped or seabird colonies are present in the immediate vicinity is not permitted.

(b) Aircraft overflight of the site is not permitted at altitudes less than 1,000 m unless the proposed flight plan has been reviewed in advance by the organisation(s) conducting CEMP activities at the site (see Section E.2).

(c) The use of land vehicles is not permitted except to transport equipment and supplies to and from the field camp.

(d) Pedestrians are not permitted to walk through areas used regularly by pinnipeds and seabirds (i.e. colonies, resting areas, pathways) or to disturb other fauna or flora, except as necessary to conduct authorised research.

3. Prohibitions regarding structures:

(a) New structures are not permitted to be built within the site unless the proposed plans have been reviewed in advance by the organisation(s) conducting CEMP activities at the site (see Section E.2).

(b) Building structures other than those directly supporting CEMP directed scientific research and monitoring activities or to house personnel and/or their equipment is not permitted.

(c) Human occupation of these structures is not permitted during the period 1 June to 31 August (see Section D.1(c)).

4. Prohibitions regarding waste disposal:

(a) Landfill disposal of non-biodegradable materials is not permitted; non-biodegradable materials brought to the site are to be removed when no longer in use.

(b) Disposal of waste fuels, volatile liquids and scientific chemicals within the site is not permitted; these materials are to be removed from the site for proper disposal elsewhere.

(c) The burning of any non-organic materials or the open burning of any materials is not permitted (except for properly used fuels for heating, lighting, cooking or electricity).

5. Prohibitions regarding the Antarctic Treaty System:

It is not permitted to undertake any activities in the Seal Islands CEMP Protected Area which are not in compliance with the provisions of: (i) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora; (ii) the Convention on the Conservation of Antarctic Seals; and (iii) the Convention on the Conservation of Antarctic Marine Living Resources.

E. Communications Information

1. Organisation(s) appointing national representatives to the Commission: Bureau of Oceans and International Environmental and Scientific Affairs U.S. Department of State, Washington, DC 20520, USA, Telephone: +1 (202) 647 3262, Facsimile: +1 (202) 647 1106.

2. Organisation(s) which potentially might conduct CEMP studies at the site: U.S. Antarctic Marine Living Resources Program, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, PO Box 271, La Jolla, CA 92038, USA, Telephone: +1 (858) 546 5601, Facsimile: +1 (858) 546 5608.

Annex 91–03/A Seal Islands, Appendix 1

Code of Conduct for the Seal Islands, Antarctica

Investigators should take all reasonable steps to ensure that their activities, both in implementing their scientific protocols as well as in maintaining a field camp, do not unduly harm or alter the natural behaviour and ecology of wildlife in the Seal Islands. Wherever possible, actions should be taken to minimise disturbance of the natural environment. Capturing, handling, killing, photographing and taking eggs, blood or other biological samples from pinnipeds and seabirds should be limited to that necessary to provide essential background information or to characterise and monitor individual and population parameters that may change in detectable ways in response to changes in food availability or other environmental factors. Sampling should be done and reported in accordance with: (i) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora; (ii) the Convention for the Conservation of Antarctic Seals; and (iii) the Convention on the Conservation of Antarctic Marine Living Resources.

Geological and other studies which can be done inside of the pinniped and seabird breeding seasons in such a way as they do not damage or destroy pinniped or seabird breeding areas, or access to those areas, would be permitted as long as they would not adversely affect the planned assessment and monitoring studies. Likewise, the planned assessment and monitoring studies would not be affected adversely by periodic biological surveys or studies of other species which do not result in killing, injuring or disturbing pinnipeds or seabirds, or damage or destroy pinnipeds or seabird breeding areas or access to those areas.

Annex 91–03/A Seal Islands, Appendix 2

Background Information Concerning the Seal Islands, Antarctica

Prior to 1819, there were substantial colonies of fur seals, and possible elephant seals, throughout the South Shetland Islands archipelago. Thereafter, commercial exploitation increased and, by the mid-1820s, fur seal breeding colonies had been completely destroyed throughout the South Shetland Islands (Stackpole, 1955; O'Gorman, 1963). Antarctic fur seals were not observed again in the South Shetland Islands until 1958, when a small colony was discovered at

Cape Shirreff, Livingston Island (O'Gorman, 1961). The original colonisers probably came from South Georgia where surviving fur seal colonies had substantially recovered by the early 1950s. At present, the fur seal rookeries in the Seal Islands group are the second largest in the South Shetland Islands, with the largest rookeries being at Cape Shirreff and Telmo Islands, Livingston Island (Bengtson et al., 1990). During the past three decades, the population of Antarctic fur seals in the South Shetland Islands grew to a level at which tagging or other research could be undertaken at selected locations without threatening the population's continued existence and growth. During the 1986/87 austral summer, researchers from the USA surveyed areas on the South Shetland Islands and the Antarctic Peninsula to identify fur seal and penguin breeding colonies that might be suitable for inclusion in the network of CEMP monitoring sites being established. The results of that survey (Shuford and Spear, 1987; Bengtson et al., 1990), suggested that the Seal Island area would be an excellent site for long-term monitoring of fur seal and penguin colonies that might be affected by fisheries in the Antarctic Peninsula Integrated Study Region.

To safely and effectively carry out a long-term monitoring program, a temporary, multi-year field camp for a small group of researchers was established on Seal Island. This camp was occupied annually by U.S. scientists during the austral summer (approximately December to February) between 1986/87 and 1993/94. Because of the geological assessment that the cliff areas above and around the camp site are unstable and might result in catastrophic failure during periods of intense rainfall, the camp was closed. Between 1995/96 and 1998/99 all buildings, equipment, and supplies were retrograded from the island. In 1991, to protect the site from damage or disturbance that could adversely affect the long-term CEMP monitoring and directed research which were being conducted and planned for the future, the Seal Islands were proposed as a CEMP Protected Area. At its 1997 meeting (SC–CAMLR–XVI, paragraphs 4.17 to 4.20), the CCAMLR Scientific Committee reviewed the status of the Seal Island CEMP site management plan. Based on the expectation that research at the site would end, the Scientific Committee agreed that site protection would be extended for five years.

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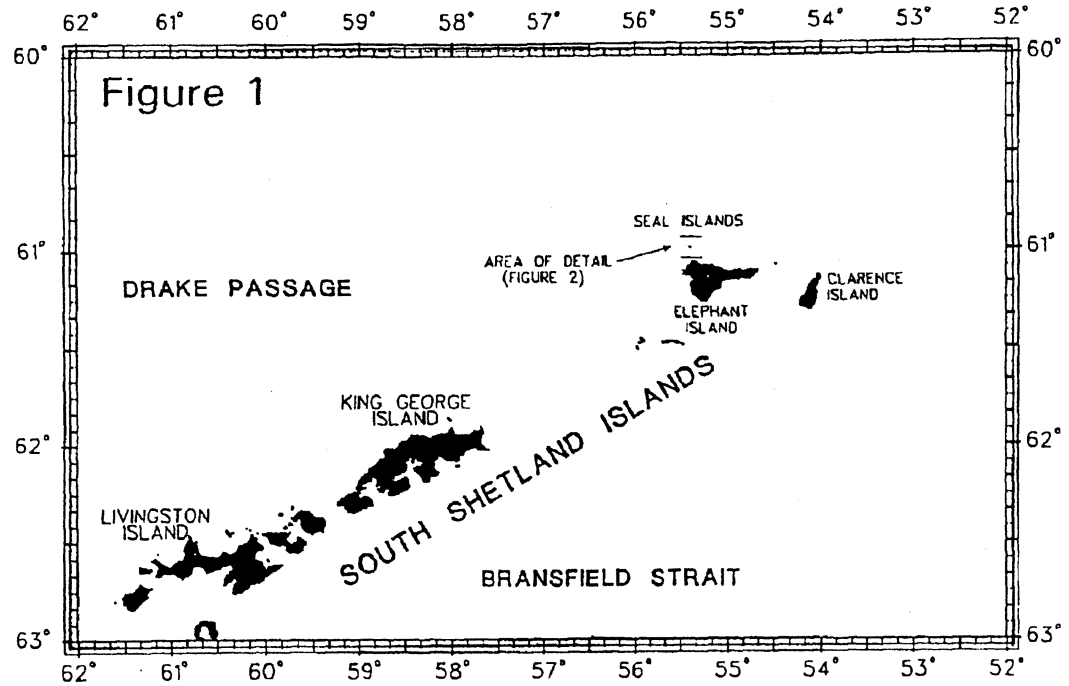

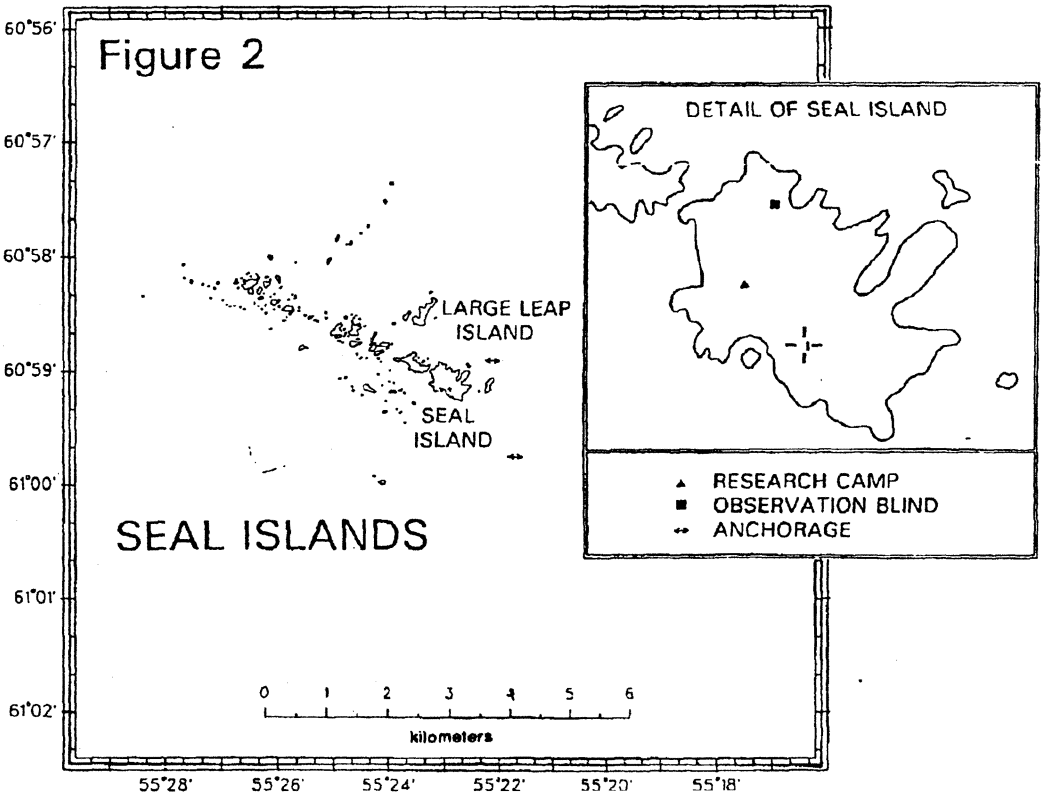

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Resolution 7/IX

Driftnet fishing in the Convention Area
(Species: all; Area: all; Season: all; Gear: drifnet)

1. The Commission endorsed the goals of the UN General Assembly Resolution 44/225 on large-scale pelagic driftnet fishing, which calls, *inter alia*, for a cessation of any further expansion of large-scale pelagic driftnet fishing on the high seas. Recognising the concentration of marine living resources present in Antarctic waters, it was noted that large-scale pelagic driftnet fishing can be a highly indiscriminate and wasteful fishing method that is widely considered to threaten the effective conservation of living marine resources. Although no Member is currently engaged in large-scale pelagic driftnet fishing in the Convention Area, the Commission expressed concern about the potential impact on marine living resources if large-scale pelagic driftnet fishing were to expand into the Convention Area.

2. To this end, the Commission agreed, in accordance with UN Resolution 44/225, that there will be no expansion of large-scale pelagic driftnet fishing into the Convention Area.

3. It was agreed that, in accordance with Article X, the Commission would draw this Resolution to the attention of any State that is not a Party to the Convention and whose nationals or vessels engage in large-scale pelagic driftnet fishing.

Resolution 10/XII

Resolution on harvesting of stocks occurring both within and outside the Convention Area
(Species: all; Area: all; Season: all; Gear: all)
The Commission,

Recalling the principles of conservation in Article II of the Convention and in particular that of the maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources,

Recalling the requirement under Article XI of the Convention for the Commission to seek to cooperate with Contracting Parties which may exercise jurisdiction in marine areas adjacent to the area to which the Convention applies in respect of the conservation of any stock or stocks of associated species which occur both within those areas and the area to which the Convention applies, with a view to harmonising the Conservation Measures adopted in respect of such stocks,

Emphasising the importance of further research on any stock or stocks of species which occur both within the area of the Convention and within adjacent areas,

Noting the concerns expressed by the Scientific Committee on the substantial exploitation of such stocks inside and outside the Convention Area, reaffirmed that Members should ensure that their flag vessels conduct harvesting of such stocks in areas adjacent to the Convention Area responsibly and with due respect for the Conservation Measures it has adopted under the Convention.

Resolution 14/XIX

Catch Documentation Scheme: implementation by Acceding States and non-Contracting Parties
(Species: Toothfish; Area: all; Season: all; Gear: all)
The Commission,

Having considered reports on the implementation of the Catch Documentation Scheme for *Dissostichus* spp. established by Conservation Measure 10–05 (1999),

Being satisfied that the Scheme has been successfully launched, and *noting* the improvements to the scheme made by Conservation Measures 10–05 (2000) and 10–05 (2001),

Conscious that the effectiveness of the Scheme depends also on implementation of the Scheme by those Contracting Parties which are not Members of the Commission ('Acceding States') but which fish for, or trade in, *Dissostichus* spp., as well as by non-Contracting Parties,

Concerned at the evidence that several acceding States and non-Contracting Parties which continue to be engaged in fishing for, or trading in, *Dissostichus* spp. are not implementing the Scheme,

Particularly concerned at the failure by such acceding States to implement the Scheme, to uphold and promote its objectives, and to meet their obligations under Article XXII to exert appropriate efforts with regard to activities contrary to the objectives of the Convention,

Determined to take all necessary measures, consistent with international law, to ensure that the effectiveness and credibility of the Scheme is not harmed by non-implementation of it by acceding States and non-Contracting Parties,

Acting pursuant to Article X of the Convention,

1. Urges all Acceding States and non-Contracting Parties not participating in the Catch Documentation Scheme which fish for, or trade in, *Dissostichus* spp. to implement the Scheme as soon as possible.

2. Requests to this end that the CCAMLR Secretariat convey this resolution to such Acceding States and non-Contracting Parties and give all possible advice and assistance to them.

3. Recommends that Members of the Commission make appropriate representations concerning this resolution to such Acceding States and non-Contracting Parties.

4. Reminds Members of the Commission of their obligation under the Catch Documentation Scheme to prevent trade in *Dissostichus* spp. in their territory, or by their flag vessels, with Acceding States or non-Contracting Parties when it is not carried out in compliance with the Scheme.

5. Decides to consider the matter again at the Twentieth Meeting of the Commission in 2001 with a view to taking such further measures as may be necessary.

Resolution 15/XXII

Use of ports not implementing the Catch Documentation Scheme for *Dissostichus* spp.
(Species: Toothfish; Area: all; Season: all; Gear: all)
The Commission,

Noting that a number of Acceding States and non-Contracting Parties not participating in the Catch Documentation Scheme for *Dissostichus* spp., as set out in Conservation Measure-10–05, continue to trade in *Dissostichus* spp.,

Recognising that these Acceding States and non-Contracting Parties thus do not participate in the landing procedures for *Dissostichus* spp. accompanied by *Dissostichus* Catch Documents, urges Contracting Parties,

When licensing a vessel to fish for *Dissostichus* spp. either inside the Convention Area under Conservation Measure 10–02, or on the high seas, to require, as a condition of that licence [1], that the vessel should land catches only in States that are fully implementing the CDS; and to attach to the licence a list of all Acceding States and non-Contracting Parties that are fully implementing the Catch Documentation Scheme.

[1] Includes permits and authorisations.

Resolution 16/XIX

Application of VMS in the Catch Documentation Scheme
(Species: Toothfish; Area: all; Season: all; Gear: all)

The Commission agreed that, on a voluntary basis, subject to their laws and regulations, Flag States participating in the Catch Documentation Scheme for *Dissostichus* spp. should ensure that their flag vessels authorised to fish for or tranship

Dissostichus spp. on the high seas maintain an operational VMS, as defined in Conservation Measure 10–04, throughout the whole of the calendar year.[1]

[1] This requirement does not extend to vessels of less than 19 m engaged in artisanal fisheries.

Resolution 17/XX

Use of VMS and other measures for the verification of CDS catch data for areas outside the Convention Area, in particular, in FAO Statistical Area 51
(Species: toothfish; Area: north of Convention Area; Season: all; Gear: all)
The Commission,

Recognising the need to continue to take action, using a precautionary approach, based on the best scientific information available, in order to ensure the long-term sustainability of *Dissostichus* spp. stocks in the Convention Area,

Concerned that the Catch Documentation Scheme for *Dissostichus* spp. (CDS) could be used to disguise illegal, unreported and unregulated (IUU) catches of *Dissostichus* spp. in order to gain legal access to markets,

Concerned that any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR Conservation Measures,

1. Urges States participating in the CDS to ensure that *Dissostichus* Catch Documents (DCDs) relating to landings or imports of *Dissostichus* spp., when necessary, are checked by contact with Flag States to verify that the information in the DCD is consistent with the data reports derived from an automated satellite-linked Vessel Monitoring System (VMS)[1].

2. Urges States participating in the CDS, if necessary to that end, to consider reviewing their domestic laws and regulations, with a view to prohibiting, in a manner consistent with international law, landings/transhipments/imports of *Dissostichus* spp. declared in a DCD as having been caught in FAO Statistical Area 51 if the Flag State fails to demonstrate that it verified the DCD using automated satellite-linked VMS derived data reports.

3. Requests the Scientific Committee to review the data concerning the areas where *Dissostichus* spp. occur outside the Convention Area and the potential biomass of *Dissostichus* spp. in such areas, in order to assist the Commission in the conservation and management of *Dissostichus* stocks and in defining the areas and potential biomasses of *Dissostichus* spp. which could be landed/imported/exported under the CDS.

[1] In this regard, verification of the information in the relevant DCD shall not be requested for the trawlers as described in Conservation Measure 10–05, footnote 1.

Resolution 18/XXI

Harvesting of *Dissostichus eleginoides* in areas outside of Coastal State jurisdiction adjacent to the CCAMLR Area in FAO Statistical Areas 51 and 57
(Species: toothfish; Area: north of Convention Area; Season: all; Gear: all)
The Commission,

Affirming that CCAMLR was established to conserve the marine living resources of the Antarctic marine ecosystem,

Recognising that CCAMLR also has the attributes of a regional fisheries management organisation as considered under the auspices of the United Nations,

Recognising that CCAMLR is the primary body responsible for the conservation and rational use of *Dissostichus eleginoides* in areas not under national jurisdiction,

Noting Resolution 10/XII concerning the need to harmonise management measures within and adjacent to the CCAMLR Area taking into account Article 87 of UNCLOS and in recognition of the obligations to conserve the living resources of the high seas under Articles 117 to 119 of UNCLOS,

Noting the role of cooperation in scientific research through collecting and exchanging data,

Recognising that measures to manage harvesting of stocks of *Dissostichus eleginoides* are needed in high seas of FAO Statistical Areas 51 and 57,

Recommends that Members provide data and other information, subject to their laws and regulations, relevant to understanding the biology and estimating the status of stocks in FAO Statistical Areas 51 and 57.

Recommends that Members take steps necessary to conduct only that level of harvesting of *Dissostichus eleginoides* in FAO Statistical Areas 51 and 57, which would ensure the conservation of this species in the Convention Area.

Resolution 19/XXI

Flags of non-compliance*
(Species: all; Area: all; Season: all; Gear: all)
The Commission,

Concerned that some Flag States, particularly certain non-Contracting Parties, do not comply with their obligations regarding jurisdiction and control according to international law in respect of fishing vessels entitled to fly their flag that carry out their activities in the Convention Area, and that as a result these vessels are not under the effective control of such Flag States,

Aware that the lack of effective control facilitates fishing by these vessels in the Convention Area in a manner that undermines the effectiveness of CCAMLR's Conservation Measures, leading to illegal, unreported and unregulated (IUU) catches of fish and unacceptable levels of incidental mortality of seabirds,

Considering therefore such fishing vessels to be flying Flags of Non-Compliance (FONC) in the context of CCAMLR (FONC vessels),

Noting that the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas emphasizes that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources and the failure of the States to fulfil their responsibilities with respect of fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Noting that the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing calls on States to take measures to discourage nationals subject to their jurisdiction from supporting and engaging in any activity that undermines the effectiveness of international conservation and management measures, urges all Contracting Parties and non-Contracting Parties cooperating with CCAMLR to:

1. Without prejudice to the primacy of the responsibility of the Flag State, to take measures or otherwise cooperate to ensure, to the greatest extent possible, that the nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board FONC vessels in the CCAMLR Convention Area if this is consistent with their national law.

2. Ensure the full cooperation of their relevant national agencies and industries in implementing the measures adopted by CCAMLR.

3. Develop ways to ensure that the export or transfer of fishing vessels from their State to a FONC State is prohibited.

4. Prohibit the landings and transhipments of fish and fish products from FONC vessels.

* Many of the flags hereby called FONC are commonly referred to as 'flags of convenience'.

Resolution 20/XXII

Ice-strengthening standards in high-latitude fisheries [1]
(Species: all; Area: south of 60°S; Season: all; Gear: all)
The Commission

Recognising the unique circumstances in high-latitude fisheries, especially the extensive ice coverage which can pose a risk to fishing vessels operating in those fisheries,

Recognising also that the safety of fishing vessels, crew and CCAMLR scientific observers is a significant concern of all Members,

Further recognising the difficulties of search and rescue response in high-latitude fisheries,

Concerned that collisions with ice could result in oil spills and other adverse consequences for Antarctic marine living resources and the pristine Antarctic environment,

Considering that vessels fishing in high-latitude fisheries should be suitable for ice conditions,

urges Members to licence to fish in high-latitude fisheries only those of their flag vessels with a minimum ice classification standard of ICE–1C [2] which will remain current for the duration of the planned fishing activity.

[1] Subareas and divisions south of 60 S and adjacent to the Antarctic continent.

[2] As defined in the Det Norske Veritas (DNV) Rules for Classification of Ships or an equivalent standard of certification as defined by a recognised classification authority.

Resolution 21/XXIII

Electronic Catch Documentation Scheme for *Dissostichus* spp.
(Species: toothfish; Area: all; Season: all; Gear: all)
The Commission,

Noting the successful implementation of the trial electronic Catch Documentation Scheme for *Dissostichus* spp. (E–CDS) during the intersessional period,

Desiring to ensure that *Dissostichus* Catch Documents are handled in the most efficient and timely way,

Aware of the importance of applying the best technologies to make the functioning of the Catch Documentation Scheme for *Dissostichus* spp. (CDS) more secure against, *inter alia*, possible fraudulent activities;

Noting that, whilst paper-based *Dissostichus* Catch Documents will, for the time being, also be retained, some Contracting Parties are already converting to electronic systems,

1. Urges Contracting Parties, and non-Contracting Parties cooperating in the CDS, to adopt the E–CDS as a matter of priority.

2. Requests the Secretariat to compile information relating to, and submit a report on, the implementation of the E–CDS so that the effectiveness of the electronic scheme can be reviewed at the next meeting of the Commission.

Resolution 22/XXV

International actions to reduce the incidental mortality of seabirds arising from fishing
(Species: seabirds; Area: all; Season: all; Gear: all)
The Commission,

Recollecting that the greatest current threats to species and populations of Southern Ocean seabirds breeding in the Convention Area are fishery-related incidental mortality and the potential impact of illegal, unreported and unregulated (IUU) fishing,

Noting the substantial reduction of incidental mortality of seabirds in the Convention Area as a result of Conservation Measures implemented by the Commission,

Concerned that, despite such measures, many populations of albatross and petrel species breeding in the Convention Area continue to decline and that such reductions in their populations are unsustainable,

Concerned at increasing evidence of fishery-related incidental mortality of seabirds that breed and forage in the Convention Area,

Noting that the seabirds caught are almost entirely albatross and petrel species which are threatened with global extinction,

Recognising that some populations of albatrosses and petrels will not stabilise until total incidental mortality levels are significantly reduced,

Recalling CCAMLR's collaborations with the Agreement on the Conservation of Albatrosses and Petrels (ACAP), a multilateral agreement that provides a focus for international cooperation and exchange of information and expertise towards the conservation of the declining populations of these seabirds,

Recalling repeated attempts to communicate these concerns to RFMOs,

1. Invites listed RFMOs (Appendix 1), consistent with the FAO's Code of Conduct for Responsible Fisheries and the IPOA-Seabirds, to implement or develop, as appropriate, mechanisms to require the collection, reporting and dissemination of annual data on seabird incidental mortality, particularly:

(i) Rates of incidental mortality of seabirds associated with each fishery, details of the seabird species involved, and estimates of total seabird mortality (at least at the scale of FAO area);

(ii) Measures to reduce or eliminate incidental mortality of seabirds that are in use in each fishery and the extent to which any of these are voluntary or mandatory, together with an assessment of their effectiveness;

(iii) Scientific observer programs that can provide comprehensive spatial and temporal coverage of fisheries to allow statistically robust estimation of incidental mortality associated with each fishery.

2. For high-seas areas within the range of seabirds that breed and forage in the Convention Area, where unregulated fishing takes place or where systematic data reporting has not yet been introduced by listed RFMOs, the Executive Secretary should contact Flag States which have vessels in these areas to:

(i) Express CCAMLR's interest in such seabird species,

(ii) Indicate the need to require such fishing vessels to collect and report the data specified in paragraph 1 above, and

(iii) Forward these data to the CCAMLR Secretariat to be made available to ad hoc WG–IMAF.

3. Encourages Contracting Parties to:

(i) Request that the topic of seabird incidental mortality be included on the agenda of meetings of pertinent RFMOs and, where possible and appropriate, to send relevant experts to these meetings;

(ii) Identify those areas and circumstances where incidental mortality of seabirds that breed and forage in the Convention Area occurs;

(iii) Identify and continue to develop those mitigation measures which would be most effective at reducing or eliminating such mortality and to require such measures to be implemented in the relevant fisheries.

4. Encourages Contracting Parties involved with new and developing RFMOs to request that incidental mortality of seabirds is adequately addressed and mitigated. Appropriate initiatives might include:

(i) Establishment or expansion of existing observer programs and adoption of appropriate data collection protocols on seabird incidental mortality;

(ii) Establishment of by-catch working groups that will address incidental mortality issues and make recommendations for practicable and effective mitigation measures, including evaluation of established and innovative technologies and techniques;

(iii) Evaluations of fishery impacts on the affected seabird populations;

(iv) Collaborations (e.g. on data exchange) with listed RFMOs.

5. Encourages Contracting Parties to:

(i) Implement, as appropriate, measures to reduce or eliminate seabird incidental mortality;

(ii) Require such flagged vessels to collect and report the data specified in paragraph 1 above;

(iii) Report to the CCAMLR Secretariat annually on the implementation of such measures, including their effectiveness in reducing seabird incidental mortality.

6. Requests ad hoc WG–IMAF, at its annual meeting, to collate and analyse reports relating to paragraphs 1, 2 and 5 above and advise the Commission, through the Scientific Committee, on the implementation and effectiveness of this resolution.

7. Further requests the Secretariat to bring this resolution to the attention of the RFMOs listed in Appendix 1 and seek their cooperation on its implementation.

Appendix 1

Regional Fisheries Management Organisations Identified for Contact With Respect to Collaborations on the Mitigation of By-Catch of Southern Ocean Seabirds

Inter-American Tropical Tuna Commission (IATTC)
International Commission for the Conservation of Atlantic Tunas (ICCAT)
South East Atlantic Fisheries Organisation (SEAFO)
Indian Ocean Tuna Commission (IOTC)
Commission for the Conservation of Southern Bluefin Tuna (CCSBT)
Agreement on the Organization of the Permanent Commission on the Exploitation and Conservation of the Marine Resources of the South Pacific, 1952 (CPPS)
Southwest Indian Ocean Fisheries Commission (SWIOFC)
Commission for Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (WCPFC)
Western Indian Ocean Tuna Organization Convention (WIOTO)
The organization does not have regulatory power.
Southern Indian Ocean Fisheries Agreement (SIOFA)

Resolution 23/XXIII

Safety on board vessels fishing in the Convention Area
(Species: all; Area: all; Season: all; Gear: all)
The Commission,

Recognising the difficult and dangerous conditions experienced in high-latitude fisheries in the Convention Area,

Further considering the remoteness of those waters and in consequence the difficulties of search and rescue response,

Desiring to ensure that the safety of fishing crews and CCAMLR scientific observers remains a priority concern of all Members,

Urges Members to take particular measures through, *inter alia*, appropriate survival training and the provision and maintenance of appropriate equipment and clothing to promote the safety of all those on board vessels fishing in the Convention Area.

Resolution 25/XXV

Combating illegal, unreported and unregulated fishing in the Convention Area by the flag vessels of non-Contracting Parties
(Species: all; Area: all; Season: all; Gear: all)
The Commission,

Concerned about the increasing number of vessels repeatedly fishing in the Convention Area in an illegal, unreported or unregulated (IUU) manner,

Recognising that such fishing is causing potentially irreversible damage to fish stocks and other marine species and preventing the Commission from achieving its objective of conservation of Antarctic marine living resources in the Convention Area,

Concerned that many of these vessels are flagged to non-Contracting Parties that have failed to respond to correspondence from the Commission and diplomatic and other representations by Commission Members, seeking that they cooperate with the Commission,

Acknowledging that many of the above non-Contracting Parties are Parties to the United Nations Convention on the Law of the Sea (UNCLOS),

Desiring to promote recognition that CCAMLR Conservation Measures constitute relevant standards needed to achieve conservation and rational use of Antarctic marine living resources,

Noting that the International Plan of Action to prevent, deter and eliminate IUU fishing (IPOA–IUU) urges States to ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing and requires that a Flag State be in a position to exercise its responsibility to control any vessel it registers and ensure such vessels do not engage in or support IUU fishing,

Determined to pursue diplomatic and other action, in accordance with international law, with non-Contracting Parties that fail to cooperate with CCAMLR, including by failing to direct their flag vessels to cease IUU fishing and failing to take legal and other action against their flag vessels that disobey such directions,

Recognising the value of cooperation and joint diplomatic approaches by CCAMLR

Contracting Parties in undertaking such action and exerting influence, urges all Contracting Parties to individually and collectively, including in other relevant international fora such as the United Nations Food and Agriculture Organization and regional fisheries management organisations, to the extent possible in accordance with their applicable laws and regulations:

1. Pursue diplomatic and other action, in accordance with international law, with non-Contracting Party Flag States, seeking, as appropriate, that they:

(i) Recognise that CCAMLR Conservation Measures constitute relevant standards needed to achieve conservation and rational use of Antarctic marine living resources;

(ii) Investigate the activities of vessels fishing under their flag in the Convention Area, in accordance with Article 94 of UNCLOS, and report findings of such investigations to the Commission;

(iii) Accede to the Convention and cooperate with the Commission and, until such time as they do, direct their flag vessels not to fish in the Convention Area and take legal and other action against those vessels that disobey this directive;

(iv) Grant permission for boarding and inspection by designated CCAMLR inspectors of their flag vessels suspected of, or found to be, fishing in an IUU manner in the Convention Area.

2. Seek the cooperation of non-Contracting Party Port States when IUU fishing vessels seek to use the ports of non-Contracting Parties, urging them to take the steps in accordance with Conservation Measure 10–07.

Policy To Enhance Cooperation Between CCAMLR and Non-Contracting Parties

(as adopted at CCAMLR–XVIII and amended at CCAMLR–XXV)

The Commission, in order to:

- Ensure the effectiveness of CCAMLR Conservation Measures;
- Enhance cooperation with non-Contracting Parties, including those implicated in fishing which undermines the effectiveness of those measures (hereafter referred to as illegal, unreported and unregulated fishing (IUU) fishing); and
- Eliminate IUU fishing, including that by non-Contracting Parties,

hereby adopts the following policy:

I. The Executive Secretary is requested to develop a list of non-Contracting Parties implicated in IUU fishing and or trade either after the

adoption of this policy or during the three years prior, which has undermined the effectiveness of CCAMLR Conservation Measures.

II. The Chairman of the Commission shall write to the Minister for Foreign Affairs of each non-Contracting Party included in the abovementioned list explaining how IUU fishing undermines the effectiveness of CCAMLR Conservation Measures. The letter, as appropriate, will:

(a) Invite and encourage non-Contracting Parties to attend as observers at meetings of the Commission in order to improve their understanding of the work of the Commission and the effects of IUU fishing;

(b) Encourage non-Contracting Parties to accede to the Convention;

(c) Inform non-Contracting Parties of the development and implementation of the CCAMLR Catch Documentation Scheme for Dissostichus spp. and provide them with a copy of the Conservation Measure and the explanatory memorandum;

(d) Encourage non-Contracting Parties to participate in the CCAMLR Catch Documentation Scheme and draw their attention to the consequences for them of not participating;

(e) Request non-Contracting Parties to prevent their flag vessels from fishing in the Convention Area in a manner which undermines the effectiveness of measures adopted by CCAMLR to ensure conservation and sustainably managed fisheries;

(f) If their flag vessels are involved in IUU fishing, request non-Contracting Parties to provide information to the CCAMLR Secretariat on their vessels' activities, including catch and effort data;

(g) Seek the assistance of non-Contracting Parties in investigating the activities of their flag vessels suspected of being involved in IUU fishing, including inspecting such vessels when they next reach port;

(h) Request non-Contracting Parties to report to the CCAMLR Secretariat on landings and transhipments in their ports in accordance with the format specified in Attachment A; and

(i) Request non-Contracting Parties to deny landing or transhipments in their ports for fish harvested in CCAMLR waters not taken in compliance with CCAMLR Conservation Measures and requirements under the Convention.

III. Parties shall individually and collectively take all appropriate efforts to implement or assist in the implementation of this policy; such efforts may include taking concerted action on joint demarches on non-Contracting Parties to complement correspondence from the Chairman.

IV. The Commission will annually review the effectiveness of the implementation of this policy.

V. The Executive Secretary will regularly inform non-Contracting Parties concerned of new Conservation Measures adopted by CCAMLR.

Attachment A

Submission of Information by Non-Contracting Parties on Landings and Transhipments of Toothfish Dissostichus ssp.) in Their Ports

To the extent possible the required information should be submitted in the following format:

(i) Whether the vessel is a fishing or cargo vessel; if it is a fishing vessel, what type of vessel (trawler/longliner);

(ii) The name, international call sign and registration number of the vessel;

(iii) The flag and port of registration;

(iv) Whether an inspection had been conducted by the Port State and, if so, its findings, including information on the fishing licence of the vessel concerned;

(v) The species of fish involved, including the weight and form of catch, and whether it was landed or transhipped;

(vi) If a fishing vessel, the location(s) in which it had operated according to the vessel's records and where it reported the catch as having been taken (CCAMLR or non CCAMLR); and

(vii) The nature of any matters requiring further investigation by the Flag State.

Attachment B

CCAMLR Cooperation Enhancement Program

Objectives

The aim of this Cooperation Enhancement Program is to encourage and build the capacity of non-Contracting Parties to cooperate with CCAMLR. The ultimate desired outcome is more countries working with CCAMLR to combat illegal, unreported and unregulated (IUU) fishing on the water and in their ports.

Cooperation between non-Contracting Parties and CCAMLR may be through:

- Exchange of information about IUU fishing with CCAMLR;
- Participation in key CCAMLR initiatives, such as the CDS, through implementation of Conservation Measures;
- Acceding to the Convention and/or joining the Commission, as appropriate.

Guiding Principles

The Cooperation Enhancement Program has the following attributes:

- A focus on technical cooperation;
- Flexibility to tailor cooperation to meet the needs of both the Commission and the recipient State on a case-by-case basis;
- A partnership model involving the CCAMLR Secretariat, experienced CCAMLR Member(s) as sponsors and the recipient States(s);
- Matching of sponsors and recipients based on expertise, historical relationships between States and proximity;
- Central repository of information and training material by the CCAMLR Secretariat.

Resourcing

CCAMLR Members will initially fund their own costs of delivery and participation in cooperation enhancement exercises. The Commission should investigate other sources of funding, including the establishment of a special fund to which Contracting Parties can contribute. CCAMLR Members can develop their own training materials at any time as required.

To encourage consistency and ensure effective use of Members' resources, CCAMLR Members will actively share training materials. This will be facilitated by the Secretariat maintaining a central repository of relevant materials and information on the CCAMLR Web site. CCAMLR Conservation Measures will always form the basis of technical and training cooperation. CCAMLR will fund the development of a package of standing training materials for the Catch Documentation Scheme that will be available to all members.

Selecting Countries for Capacity Building

The Commission will agree a priority list of countries that may benefit from technical cooperation and update this list as required. The list will be developed from information submitted by members, including reports on the activity and movement of IUU fishing vessels and their interactions with non-Contracting Parties.

Inclusion of countries on the list will be guided by the following criteria:

- The country is a key flag and/or port State for toothfish, and its cooperation would assist the Commission to better control IUU fishing and trade of fish caught in an IUU manner and/or achieve the objective of the Convention.

• The country is open to change and there is genuine political will to cooperate with CCAMLR and combat IUU fishing, but the country does not do so because it lacks the resources or expertise.

• With some training and technical assistance over time, the country would eventually be able to implement relevant Conservation Measures on their own.

• The country has appropriate government structures to commit the necessary time and resources to allow it to effectively participate in technical cooperation and is prepared to make a commitment to such cooperation (for example, by nominating a competent authority for implementation of the CDS).

Reporting

CCAMLR Members are encouraged to report on the nature and outcomes of their technical cooperation. This reporting is at the discretion of Members, but could take the form of a Commission circular or a presentation at the Commission meeting.

Text of the CCAMLR System of Inspection [1]

I. Each Member of the Commission may designate Inspectors referred to in Article XXIV of the Convention.

(a) Designated Inspectors shall be familiar with the fishing and scientific research activities to be inspected, the provisions of the Convention and measures adopted under it.

(b) Members shall certify the qualifications of each Inspector they designate.

(c) Inspectors shall be nationals of the Contracting Party which designates them and, while carrying out inspection activities, shall be subject solely to the jurisdiction of that Contracting Party.

(d) Inspectors shall be able to communicate in the language of the Flag State of the vessels on which they carry out their activities.

(e) Inspectors shall be accorded the status of ship's officer while on board such vessels.

(f) Names of Inspectors shall be communicated to the Secretariat within fourteen days of designation.

II. The Commission shall maintain a register of certified Inspectors designated by Members.

(a) The Commission shall communicate, each year, the register of Inspectors to each Contracting Party within a month of the last day of the Commission meeting.

III. In order to verify compliance with Conservation Measures adopted under the Convention, Inspectors designated by Members shall be entitled to board a fishing or fisheries research vessel in the area to which the Convention applies to determine whether the vessel is, or has been, engaged in scientific research, or harvesting, of marine living resources.[2]

(a) Inspection may be carried out by designated Inspectors from vessels of the Designating Member.

(b) Ships carrying Inspectors shall carry a special flag or pennant approved by the Commission to indicate that the Inspectors on board are carrying out inspection duties in accordance with this system.

(c) Such Inspectors may also be placed on board vessels, with the schedule of embarkation and disembarkation of Inspectors subject to arrangements to be concluded between the Designating Member and the Flag State.

IV. Each Contracting Party shall provide to the Secretariat:

(a) One month before the commencement of the research cruise and in accordance with Conservation Measure 24–01 'The Application of Conservation Measures to Scientific Research', the names of all vessels intending to conduct fishing for research purposes.

(b) Within seven days of the issuance of each permit or licence in accordance with Conservation Measure 10–02 'Licensing and Inspection Obligations of Contracting Parties with regard to their Flag Vessels Operating in the Convention Area', the following information about licences or permits issued by its authorities to its flag vessels authorising them to fish in the Convention Area:

• Name of the vessel;

• Time periods authorised for fishing (start and end dates);

• Area(s) of fishing;

• Species targeted; and

• Gear used.

(c) By 31 August, an annual report of steps it has taken to implement the inspection, investigation and sanction provisions of Conservation Measure 10–02 'Licensing and Inspection Obligations of Contracting Parties with regard to their Flag Vessels Operating in the Convention Area'.

V. (a) Any vessel present in the Convention Area for the purpose of harvesting or conducting scientific research on marine living resources shall, when given the appropriate signal in the International Code of Signals by a ship carrying an Inspector (as signified by flying the flag or pennant referred to above), stop or take other such actions as necessary to facilitate the safe and prompt transfer of the Inspector to the vessel, unless the vessel is actively engaged in harvesting operations, in which case it shall do so as soon as practicable.

(b) The Master of the vessel shall permit the Inspector, who may be accompanied by appropriate assistants, to board the vessel.

VI. Inspectors shall have the authority to inspect catch, nets and other fishing gear as well as harvesting and scientific research activities, and shall have access to records and reports of catch and location data insofar as necessary to carry out their functions.

(a) Each Inspector shall carry an identity document issued by the Designating Member in a form approved or provided by the Commission stating that the Inspector has been designated to carry out inspection in accordance with this system.

(b) On boarding a vessel, an Inspector shall present the document described in paragraph VI(a), above.

(c) The inspection shall be carried out so that the vessel is subject to the minimum interference and inconvenience. Inquiries shall be limited to the ascertainment of facts in relation to compliance with the Commission measures in effect for the Flag State concerned.

(d) Inspectors may take photographs and/or video footage as necessary to document any alleged violation of Commission measures in force.

(e) Inspectors shall affix an identification mark approved by the Commission to any net or other fishing gear which appears to have been used in contravention to Conservation Measures in effect and shall record this fact in the reports and notification referenced in paragraph VIII, below.

(f) Inspectors shall be provided appropriate assistance by the Master of the vessel in carrying out their duties, including access as necessary to communications equipment.

(g) Each Contracting Party, subject to and in accordance with their applicable laws and regulations, including rules governing the admissibility of evidence in domestic courts, shall consider and act on reports from Inspectors of Designating Members under this scheme on the same basis as reports from its

[1] As adopted at CCAMLR–VII (paragraph 124) and amended at CCAMLR–XII (paragraphs 6.4 and 6.8), CCAMLR–XIII (paragraph 5.26), CCAMLR–XIV (paragraphs 7.22, 7.26 and 7.28), CCAMLR–XV (paragraph 7.24), CCAMLR–XVI (paragraph 8.14), CCAMLR–XVIII (paragraph 8.25) and CCAMLR–XXV (paragraph 12.73).

[2] The Commission stated its understanding that the System of Inspection applied to flag vessels of all Members of the Commission and where appropriate, Acceding States (CCAMLR–XIV, paragraph 7.25).

own inspectors, and both Contracting Party and designating Member concerned shall cooperate in order to facilitate judicial or other proceedings arising from any such report.

VII. If a vessel refuses to stop or otherwise facilitate transfer of an Inspector, or if the Master or crew of a vessel interferes with the authorised activities of an Inspector, the Inspector involved shall prepare a detailed report, including a full description of all the circumstances and provide the report to the Designating Member to be transmitted in accordance with the relevant provisions of paragraph IX.

(a) Interference with an Inspector or failure to comply with reasonable requests made by an Inspector in the performance of his duties shall be treated by the Flag State as if the Inspector were an Inspector of that State.

(b) The Flag State shall report on actions taken under this paragraph in accordance with paragraph XI, below.

VIII. Inspectors shall complete the approved CCAMLR inspection report form.

(a) The Inspector shall provide a written explanation, on the inspection report form, of any alleged violation of Commission measures in force. The Inspector shall allow the Master of the vessel being inspected to comment, on the inspection report form, about any aspect of the inspection.

(b) The Inspector shall sign the inspection report form. The Master of the inspected vessel shall be invited to sign the inspection report form to acknowledge receipt of the report.

(c) Before leaving the vessel that has been inspected, the Inspector shall give the Master of that vessel a copy of the completed inspection form.

(d) The Inspector shall provide a copy of the completed inspection form along with photographs and video footage to the Designating Member not later than 15 days of his/her arrival to port.

(e) The Designating Member shall forward a copy of the inspection form not later than 15-days from its reception along with two copies of photographs and video footage to the CCAMLR Executive Secretary who shall forward one copy of this material to the Flag State of the inspected vessel not later than seven days from receipt.

(f) Fifteen days after the transmission of the completed inspection form to the Flag State, the CCAMLR Executive Secretary shall transmit that form to Members together with comments or observations, if any, received from the Flag State.

IX. Any supplementary reports or information, or any report prepared in accordance with paragraph VII, shall be provided by the Designating Member to the CCAMLR Executive Secretary. The latter shall provide such reports or information to the Flag State, which shall be then afforded the opportunity to comment. The CCAMLR Executive Secretary shall transmit the reports or information to Members within 15 days following their receipt from the Designating Member, and the observations or comments, if any, received from the Flag State.

X. A fishing vessel present in the area of application of the Convention shall be presumed to have been engaged in scientific research, or harvesting, of marine living resources (or to have been commencing such operations) if one or more of the following four indicators have been reported by an inspector, and there is no information to the contrary:

(a) Fishing gear was in use, had recently been in use or was ready to be used, e.g.:

- Nets, lines or pots were in the water;
- Trawl nets and doors rigged;
- Baited hooks, baited pots or traps or thawed bait were ready for use;
- Log indicated recent fishing or fishing commencing;

(b) fish which occur in the Convention Area were being processed or had recently been processed, e.g.:

- Fresh fish or fish waste were on board;
- Fish were being frozen;
- From operational or product information;

(c) Fishing gear from the vessel was in the water, e.g.:

- Fishing gear bore the vessel's markings;
- Fishing gear matched that on the vessel;
- Log indicated gear in the water;

(d) Fish (or their products) which occur in the Convention Area were stowed on board.

XI. If, as a result of inspection activities carried out in accordance with these provisions, there is evidence of violation of measures adopted under the Convention, the Flag State shall take steps to prosecute and, if necessary, impose sanctions.

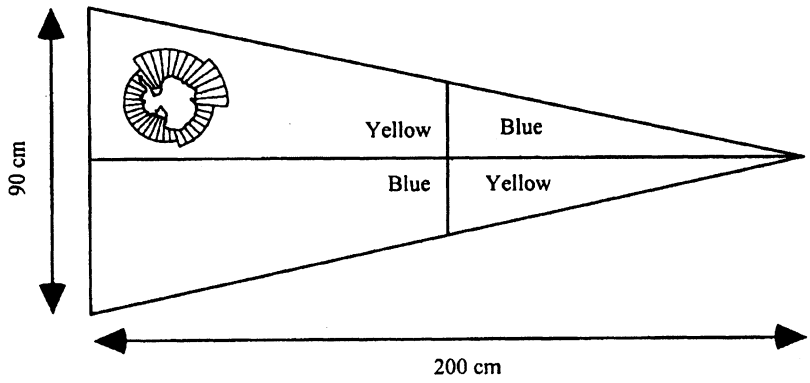
XII. The Flag State shall, within fourteen days of the laying of charges or the initiation of proceedings relating to a prosecution, inform the Secretariat of this information, and shall continue thereafter to inform the Secretariat as the prosecution develops or is concluded. In addition, the Flag State shall at least once a year report to the Commission, in writing, about the results of such prosecutions and sanctions imposed. If a prosecution has not been completed, a progress report shall be made. When a prosecution has not been launched, or has been unsuccessful, the report shall contain an explanation.

XIII. Sanctions applied by Flag States in respect to infringements of CCAMLR provisions shall be sufficiently severe as to effectively ensure compliance with CCAMLR Conservation Measures and to discourage infringements and shall seek to deprive offenders of any economic benefit accruing from their illegal activities.

XIV. The Flag State shall ensure that any of its vessels which have been found to have contravened a CCAMLR Conservation Measure do not carry out fishing operations within the Convention Area until they have complied with the sanctions imposed.

BILLING CODE 3510–22–P

INSPECTION PENNANT



FISHING GEAR IDENTIFICATION MARK

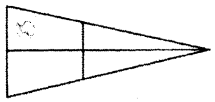
A standard marker has been approved for identifying fishing gear that has been judged by an Inspector to be contrary to standards set by the Commission. It is in the form of a sealable plastic ribbon with an identifying number stamped into it. The identifying number is to be recorded in the appropriate space in the form for reporting the inspection.

IDENTIFICATION DOCUMENT

Inspectors are required to carry an identity document of the type shown below.

Front

COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES



The Bearer of this Document .....
(Name in Capitals)

.....
(Signature)

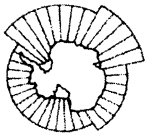
is a CCAMLR inspector for the 20...../..... season and has the authority to act under the arrangement approved by the Commission.

Issued by: .....

Signature: ..... Date: .....

.....
(Name of issuing country in capitals, and inspector's identity number)

Photograph



Back

The bearer of this card is an authorised inspector under the CCAMLR System of Observation & Inspection

Le porteur de cette carte est un inspecteur autorisé à agir selon le Système d'observation et d'inspection de la CCAMLR.

Предъявитель настоящего документа является инспектором, уполномоченным согласно Системе АНТКОМа по наблюдению и инспекции

El portador de esta tarjeta es un inspector autorizado según el Sistema de Observación e Inspección de la CCRVMA

Der Träger dieses Ausweises ist ein im Rahmen des CCAMLR Inspektions- und Beobachtungssystems authorisierter Inspektor

本証の所持人は南極の海洋性物資源の保存に関する条約（CCAMLR）の監視及び検査の制度に基づく正規の検査員である．

문종의 소지자는 남극 해양생물 자원보존위원회의 감시 및 검사제도에 따라 권한을 부여받은 검사관임.

Okaziciel tego dokumentu jest upowaznionym inspektorem dzialajacym w ramach Systemu Obserwacji i Kontroli Konwencji o Ochronie Zywych Zasobow Morskich Antarktyki (CCAMLR)

BILLING CODE 3510–22–C

Text of the CCAMLR Scheme of International Scientific Observation [1]

A. Each Member of the Commission may designate observers referred to in Article XXIV of the Convention.

(a) Activities of scientific observers on board vessels will be specified by the Commission. These activities are laid down in Annex I and may be modified taking into account advice from the Scientific Committee.

(b) Scientific observers shall be nationals of the Member who designates them and shall conduct themselves in accordance with the customs and order existing on the vessel on which they are operating.

(c) Members shall designate scientific observers who shall be familiar with the harvesting and scientific research activities to be observed, the provisions of the Convention and the measures adopted under it and who are adequately trained to carry out competently the duties of scientific observers as required by the Commission.

(d) Scientific observers shall be able to communicate in the language of the Flag State of the vessels on which they carry out their activities.

(e) Scientific observers shall each carry a document issued by the designating Member in a form approved by the Commission identifying them as CCAMLR scientific observers.

(f) Scientific Observers shall submit to the Commission through the designating Member, not later than one month after the completion of the observer cruise or after the return of the observer to his/her home country, a report of each observation assignment undertaken, using the observation formats approved by the Scientific Committee. A copy shall be sent to the Member whose vessel was involved.

B. In order to promote the objectives of the Convention, Members agree to take on board their vessels engaged in scientific research or harvesting of marine living resources designated scientific observers, who shall operate in accordance with bilateral arrangements concluded.

In such a bilateral arrangement, the Member wishing to place scientific observers on board a vessel of another Member shall be referred to as the 'Designating Member' whilst the Member who accepts on board its vessel shall be referred to as the 'Receiving Member'.

Such a bilateral arrangement shall include the following principles:

(a) The scientific observers shall be given the status of ship's officers. Accommodation and meals for scientific observers on board shall be of a standard commensurate with this status.

(b) Receiving Members shall ensure that their vessel operators cooperate fully with the scientific observers to enable them to carry out the tasks assigned to them by the Commission. This will include access to data and to those operations of the vessel necessary to fulfil the duties of a scientific observer as required by the Commission.

(c) Receiving Members shall take appropriate action on board their vessels to ensure the security and welfare of scientific observers in the performance of their duties, provide them with medical care and safeguard their freedom and dignity.

(d) Arrangements shall be made for messages to be sent and received on behalf of scientific observers using the vessel's communications equipment and operator. Reasonable costs of such communications shall normally be borne by the Designating Member.

(e) Arrangements involving the transportation and boarding of scientific observers shall be organised so as to minimise interference with harvesting and research operations.

(f) Scientific observers shall provide to the relevant masters copies of such records, prepared by the scientific observers, as the masters may wish to retain.

(g) Designating Members shall ensure that their scientific observers carry insurance satisfactory to the Parties concerned.

(h) Transportation of scientific observers to and from boarding points shall be the responsibility of the Designating Member.

(i) Unless otherwise agreed the equipment, clothing and salary and any related allowances of a scientific observer shall normally be borne by the Designating Member. The vessel of the Receiving Member shall bear the cost of on board accommodation and meals of the scientific observer.

C. The Designating Members shall provide details of observation programs to the Commission at the earliest possible opportunity and no later than upon the conclusion of each bilateral arrangement. For each observer deployed, the following details shall be supplied:

(a) date of signing the arrangement;

(b) name and flag of the vessel receiving the observer;

(c) Member designating the observer;

(d) area of fishing (CCAMLR statistical area, subarea, division);

(e) type of data to be collected by the observer and submitted to the Secretariat (e.g. by-catch, target species, biological data);

(f) expected dates of the start and end of the observation program;

(g) expected date of returning the observer to his/her home country.

D. Members who have designated scientific observers will take the initiative in implementing assignments identified by the Commission.

E. The scope of functions and tasks described in Annex I should not be interpreted to suggest in any way the number of required observers which will be accepted on board a vessel.

Annex I

Functions and Tasks of International Scientific Observers on Board Vessels Engaged in Scientific Research or Harvesting of Marine Living Resources

1. The function of scientific observers on board vessels engaged in scientific research or harvesting of marine living resources is to observe and report on the operation of fishing activities in the Convention Area with the objectives and principles of the Convention for the Conservation of Antarctic Marine Living Resources in mind.

2. In fulfilling this function, scientific observers will undertake the following tasks, using the observation formats approved by the Scientific Committee:

(i) Record details of the vessel's operation (e.g. partition of time between searching, fishing, transit etc., and details of hauls);

(ii) Take samples of catches to determine biological characteristics;

(iii) Record biological data by species caught;

(iv) Record by-catches, their quantity and other biological data;

(v) Record entanglement and incidental mortality of birds and mammals;

(vi) Record the procedure by which declared catch weight is measured and collect data relating to the conversion factor between green weight and final product in the event that catch is recorded on the basis of weight of processed product;

(vii) Prepare reports of their observations using the observation formats approved by the Scientific Committee and submit them to CCAMLR through their respective authorities;

(viii) Submit copies of reports to captains of vessels;

(ix) Assist, if requested, the captain of the vessel in the catch recording and reporting procedures;

[1] As adopted at CCAMLR–XI (paragraph 6.11) and amended at CCAMLR–XI (paragraph 8.21).

(x) Undertake other tasks as may be decided by mutual agreement of the parties involved;

(xi)[1] Collect and report factual data on sightings of fishing vessels in the Convention Area, including vessel type identification, position and activity;

(xii)[2] Collect information on fishing gear loss and garbage disposal by fishing vessels at sea.

[1] Added in accordance with CCAMLR–XVII (paragraph 8.16). The Commission decided to review the effectiveness and the need to continue this activity after a two-year trial period (CCAMLR–XVII, paragraph 8.17).

[2] Added in accordance with CCAMLR–XVIII (paragraph 8.21).

Dated: January 16, 2007.

Margaret F. Hayes,

Director, Office of Oceans Affairs, Department of State.

[FR Doc. 07–266 Filed 1–26–07; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Monday,
January 29, 2007

Part III

Securities and Exchange Commission

17 CFR Parts 240, 249, and 274
Internet Availability of Proxy Materials; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249 and 274

[Release Nos. 34–55146; IC–27671; File No. S7–10–05]

RIN 3235–AJ47

Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comment on Paperwork Reduction Act burden estimates.

SUMMARY: We are adopting amendments to the proxy rules under the Securities Exchange Act of 1934 that provide an alternative method for issuers and other persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials. Issuers must make copies of the proxy materials available to shareholders on request, at no charge to shareholders. The amendments put into place processes that will provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. Issuers that rely on the amendments may be able to significantly lower the costs of their proxy solicitations that ultimately are borne by shareholders. The amendments also might reduce the costs of engaging in a proxy contest for soliciting persons other than the issuer. The amendments do not apply to business combination transactions. The amendments also do not affect the availability of any existing method of furnishing proxy materials.

DATES: *Effective Date:* March 30, 2007.

Compliance Date: Persons may not send a Notice of Internet Availability of Proxy Materials to shareholders prior to July 1, 2007.

Comment Due Date: Comments on the Paperwork Reduction Act burden estimate should be received on or before March 30, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–10–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–05. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are amending Rules 14a–2,[1] 14a–3,[2] 14a–4,[3] 14a–7,[4] 14a–8,[5] 14a–12,[6] 14a–13,[7] 14b–1,[8] 14b–2,[9] 14c–2,[10] 14c–3,[11] 14c–5,[12] 14c–7,[13] Schedule 14A,[14] Schedule 14C,[15] Form 10–K,[16] Form 10–KSB,[17] Form 10–Q,[18] and Form 10–QSB,[19] under the Securities Exchange Act of 1934 [20] and Form N–SAR [21] under the Exchange Act and the Investment Company Act of 1940.[22] We also are adding new Rule 14a–16 under the Exchange Act.

[1] 17 CFR 240.14a–2.
[2] 17 CFR 240.14a–3.
[3] 17 CFR 240.14a–4.
[4] 17 CFR 240.14a–7.
[5] 17 CFR 240.14a–8.
[6] 17 CFR 240.14a–12.
[7] 17 CFR 240.14a–13.
[8] 17 CFR 240.14b–1.
[9] 17 CFR 240.14b–2.
[10] 17 CFR 240.14c–2.
[11] 17 CFR 240.14c–3.
[12] 17 CFR 240.14c–5.
[13] 17 CFR 240.14c–7.
[14] 17 CFR 240.14a–101.
[15] 17 CFR 240.14c–101.
[16] 17 CFR 249.310.
[17] 17 CFR 249.310a.
[18] 17 CFR 249.308a.
[19] 17 CFR 249.308b.
[20] 15 U.S.C. 78a *et seq.*
[21] 17 CFR 249.330 and 274.101.
[22] 15 U.S.C. 80a–1 *et seq.*

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I. Introduction

On December 8, 2005, we proposed amendments to update the proxy rules to take greater advantage of communications technology by supplementing the existing regulatory

framework with an alternative ''notice and access'' proxy model that could reduce significantly the printing and mailing costs associated with furnishing proxy materials to shareholders.[23] Under the notice and access model that we proposed, an issuer would be able to satisfy its obligations under the Commission's proxy rules by posting its proxy materials on a publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access those materials. Under the proposal, an issuer relying on the model would be required to provide a requesting shareholder with a copy of the proxy materials in paper or by e-mail, at no charge to the shareholder. We proposed that soliciting persons other than the issuer also would be able to rely on the notice and access model.

We received approximately 140 comment letters on the proposed notice and access model from a variety of interested parties, including issuers and their agents, shareholders, intermediaries and their agents, financial printers, manufacturers of mailing products, and academics. There was significant disagreement among the commenters regarding these key issues raised by the proposed model:

- The sufficiency of current Internet access among the U.S. population such that the proposed model would be desirable; [24]
- The effect that the proposed notice and access model might have on levels of proxy voting by shareholders; [25]
- The level of security and privacy on the Internet; [26]
- The extent of potential savings to issuers and those conducting proxy contests that choose to rely on the proposed model; [27] and
- Whether the proposed model may make the proxy delivery system, particularly as it relates to beneficial owners holding in street name through their brokers or other intermediaries, too complex.[28]

Several commenters suggested revisions related to the proposed notice and access model, including the following:

- The proposed rules should allow a shareholder to make an election to receive paper copies of the proxy materials with respect to any future solicitations that would remain in place until subsequently revoked by the shareholder; [29]
- An issuer should have to make the proxy card available to shareholders through the same medium it uses to make the proxy statement available to them; [30]
- The Commission should review and simplify the proxy delivery system as a whole rather than addressing the issue of electronic delivery of proxy materials in isolation; [31] and
- The New York Stock Exchange (''NYSE'') should review its current schedule of maximum fees that its member firms may charge issuers to forward issuers' proxy materials to beneficial owners.[32]

Although there was a mixed reaction to the proposal,[33] we believe that current levels of access to the Internet merit adoption of the notice and access model as an alternative to the existing proxy distribution system. In this regard, we note that more than 10.7 million beneficial shareholders already have given their affirmative consent to electronic delivery of proxy materials and approximately 87.8% of shares voted were voted electronically or telephonically during the 2006 proxy season.[34] Moreover, research submitted to us during the comment period indicates that approximately 80% of investors in the United States have access to the Internet in their homes, a greater percentage than we estimated at the proposing stage.[35] Several commenters expressed the view that the current level of Internet usage is sufficiently high to warrant adoption of the proposed notice and access model.[36] Although some commenters did not think that Internet access is sufficiently widespread, particularly among seniors,[37] to warrant implementation of the proposed model at this time,[38] the requirement that any shareholder lacking Internet access, or preferring delivery of a copy of the proxy materials, can make a permanent request to receive a copy of the proxy materials (and all future proxy materials) at no charge should substantially mitigate the concern about Internet access.

Therefore, we are adopting the proposal substantially as proposed. The final rules are intended to allow issuers and other soliciting persons to establish procedures that will promote use of the Internet as a reliable and cost-efficient means of making proxy materials

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[23] Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597]. For purposes of this release only, the term ''proxy materials'' includes proxy statements on Schedule 14A, proxy cards, information statements on Schedule 14C, annual reports to security holders required by Rules 14a–3 and 14c–3 of the Exchange Act, notices of shareholder meetings, additional soliciting materials, and any amendments to such materials. For purposes of this release, the term does not include materials filed under Rule 14a–12.

[24] See, for example, letters suggesting that current rates of Internet access are sufficient from American Bar Association (ABA), America's Community Bankers (ACB), Association of Ameritech SBC Retirees (SBC Retirees), Business Roundtable (BRT), Computershare Ltd. (Computershare), Proxinvest, Gary Tannahill, Hermes, Investment Company Institute (ICI), Securities Transfer Association (STA), and Sullivan & Cromwell. But also see, for example, letters from Association of BellTel Retirees (BellTel Retirees), Todd Collier, Joel Brown, James Davis, Donna Garal, Clark Green, Heather Harper, Frank Inman, William Lafollette, James Phipps, Beth Spletter, Megan Stroinski, and the United States Postal Service (USPS) suggesting that those rates are not sufficient.

[25] Some commenters believed that the proposed model might result in a decline in voting by shareholders. See, for example, letters from Automatic Data Processing, Inc. (ADP), James Angel, Timothy Buchman, State Board of Administration of Florida (Florida State Board), Fund of Stockowners Rights (Stockowners Rights), IR Web Report, and Securities Industry Association (SIA). However, other commenters believed the rules may increase shareholder voting by facilitating the voting process. See, for example, letters from AFL–CIO, Robert Atkinson, Institutional Shareholder Services (ISS), Proxinvest, and Society of Corporate Secretaries and Governance Professionals (SCSGP).

[26] See, for example, letters from James Angel, Todd Collier, James Davis, William LaFollette, Matthew McGuire, and USPS.

[27] See, for example, letters from ADP and Computershare.

[28] See letter from ABA.

[29] See letters from American Business Council (ABC), AFL–CIO, James Angel, CALSTRS, Florida State Board, Ohio Public Employees Retirement System (OPERS), San Diego City Employees' Retirement System (San Diego Retirement), SIA, William Sjostrom, Stocklein Law Group, Swingvote, and Paul Uhlenhop.

[30] See letters from ACB, AFL–CIO, Amalgamated Bank of LongView Funds (Amalgamated Bank), BellTel Retirees, Council of Institutional Investors (CII), Florida State Board, Carl Hagberg, International Brotherhood of Teamsters (Teamsters), National Retiree Legislative Network (NRLN), San Diego Retirement, and Swingvote.

[31] See, for example, letters from BRT, Committee of Concerned Shareholders (Concerned Shareholders), Computershare, Carl Hagberg, Mellon, and STA.

[32] See letters from BRT, Computershare, and SCSGP.

[33] It appeared that many commenters opposing adoption mistakenly believed that they would lose the ability to receive paper copies. Others objected to having to request paper copies under the notice and access model. See, for example, letters from Arthur Comings, Dave Few, George Liddell, Robert Link, and Chloris Wolski.

[34] According to data available on the Web site of ADP. See *www.ics.adp.com/release11/public_site/about/stats.html*.

[35] See letter from ADP. At the proposing stage, we estimated that 75% of people in the United States had Internet access, but we did not have an estimate for the percentage of investors with Internet access.

[36] See, for example, letters from ABA, ACB, BRT, Computershare, Hermes, ICI, Proxinvest, SBC Retirees, STA, Sullivan & Cromwell, and Gary Tannahill.

[37] See, for example, letters from American Association of Retired Persons (AARP), BellTel Retirees, Timothy Buchman, Todd Collier, NRLN, Printing Industries of America (PIA), Stockowners Rights, and Telephone Pioneers of America.

[38] See, for example, letters from BellTel Retirees, Joel Brown, Todd Collier, James Davis, Donna Garal, Clark Green, Heather Harper, Frank Inman, William Lafollette, James Phipps, Beth Spletter, Megan Stroinski, and USPS.

available to shareholders. Among those shareholders who access the proxy materials electronically, the rules also may increase the use of the Internet for voting proxies. An issuer's or other soliciting person's election to follow the notice and access model will be voluntary.[39]

Under the final rules, as discussed in more detail below, an issuer may satisfy its obligation under the Commission's proxy rules to furnish proxy materials to shareholders in connection with a proxy solicitation by posting its proxy materials on a publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and sending a Notice of Internet Availability of Proxy Materials (''Notice'') to shareholders at least 40 calendar days before the shareholder meeting date indicating that the proxy materials are available and explaining how to access those materials.[40] Shareholders must have a means to execute a proxy as of the time on which the Notice is sent.[41] The Notice also must explain how a shareholder can request a copy of the proxy materials and how a shareholder can indicate a preference to receive a paper or e-mail copy of any proxy materials distributed under the notice and access model in the future. An issuer may not send a proxy card along with the Notice; however, 10 calendar days or more after sending the Notice, the issuer may send a proxy card to shareholders.[42] If an issuer chooses to send a proxy card without a copy of the proxy statement under this provision, a copy of the Notice must accompany the proxy card so that recipients will be notified again about the Web site on which the proxy statement is accessible. Finally, the notice and access model may not be used in conjunction with a proxy solicitation related to a business combination transaction.

Shareholders and other persons conducting their own proxy solicitations may rely on the notice and access model under requirements substantially similar to the requirements that would apply to issuers. As a result, these rules may have the effect of reducing the cost of engaging in a proxy contest. However, unlike the requirements for an issuer, a soliciting person other than the issuer may selectively choose the shareholders from whom it desires to solicit proxies without the need to send an information statement to all other shareholders.

The new rules do not affect the availability of other means of providing proxy materials to shareholders, such as obtaining affirmative consents for electronic delivery pursuant to existing Commission guidance.[43] Thus, an issuer may rely on affirmative consents to furnish proxy materials to some shareholders, and rely on the notice and access model to furnish the materials to others.

We are making several significant revisions to the proposed notice and access model in response to commenters' concerns. First, the final rules do not permit a proxy card to accompany the Notice as we originally proposed, although the rules do permit an issuer or other soliciting person to send a proxy card 10 calendar days or more after it sends the Notice, provided that a copy of the Notice accompanies the proxy card.[44] Second, we are adopting a requirement that issuers and other soliciting persons send the Notice to shareholders at least 40 calendar days before the shareholder meeting date, rather than 30 calendar days before the meeting, as proposed. We are making this change so that issuers and other soliciting persons will still have at least a 30-day period in which they can send a proxy card to shareholders if they choose to do so.

Third, in addition to the proposed requirement that a shareholder be able to request a paper or e-mail copy of the proxy materials for a particular meeting, the final rules require an issuer to allow shareholders to elect to receive paper or e-mail copies of proxy materials that the issuer will distribute in the future in reliance on the notice and access model. Similarly, intermediaries must allow beneficial owners to elect to receive paper or e-mail copies of any proxy materials that will be distributed in the future in reliance on the notice and access model with respect to all securities held in the beneficial owner's account. Fourth, under the new rules, an intermediary must prepare its own Notice for distribution to beneficial owners.

Fifth, the intermediary's Notice sent to a beneficial owner will direct the owner to request paper or e-mail copies from his or her intermediary, rather than from the issuer. Finally, the final rules do not permit soliciting persons other than the issuer to engage in a conditional solicitation as proposed and, therefore, the rules require such persons to send a copy of the proxy materials upon request from a shareholder to whom they have sent a Notice.

II. Description of the Amendments

A. The Notice and Access Model for Issuers

The notice and access model that we are adopting provides an alternative means for an issuer to furnish proxy materials to its shareholders. These proxy materials include:

- Notices of shareholder meetings;
- Schedule 14A proxy statements and consent solicitation statements;
- Forms of proxy (*i.e.*, proxy cards);
- Schedule 14C information statements;
- Annual reports to security holders;[45]

[39] In a companion release, the Commission is proposing to require issuers and other soliciting persons to follow a substantially similar model. See Release No. 34–55147.

[40] An issuer or other soliciting person also must continue to comply with Exchange Act Rules 14a–6 [17 CFR 240.14a–6] and 14c–5 [17 CFR 240.14c–5], which require the issuer or other soliciting person to file its proxy statement (or information statement) and additional soliciting material with the Commission. An issuer also must continue to comply with Exchange Act Rules 14a–3(c) [17 CFR 240.14a–3(c)] and 14c–3(b) [17 CFR 240.14c–3(b)], which require an issuer to submit copies of its annual report to security holders to the Commission. The rules that we are adopting in this release do not affect any current Commission filing requirement, except that an issuer or other soliciting person following the notice and access model would be required to file the Notice as additional soliciting material under Exchange Act Rule 14a–6(b) [17 CFR 240.14a–6(b)].

[41] As discussed in more detail in Section II.A.2 of this release, an issuer or any other soliciting person must provide a means for executing proxies available at the time the Notice is sent. It may not wait until it sends a paper or e-mail copy of the proxy card 10 calendar days or more after sending the Notice to provide shareholders with a means to execute a proxy.

[42] An issuer may send a proxy card to shareholders before the conclusion of the 10-day period if the proxy card is accompanied or preceded by a copy, via the same medium, of the proxy statement and annual report to security holders if required by Rule 14a–3(b).

[43] Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the ''1995 Interpretive Release'') provided guidance on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], the Securities Exchange Act of 1934, and the Investment Company Act of 1940. Release No. 33–7288 (May 9, 1996) [61 FR 24644] (the ''1996 Interpretive Release'') provided guidance on electronic delivery of required information by broker-dealers and transfer agents under the Securities Act, the Exchange Act, and the Investment Company Act. Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Interpretive Release'') provided guidance on the use of electronic media to deliver documents under the federal securities laws, an issuer's liability for Web site content, and basic legal principles that issuers and market intermediaries should consider in conducting online offerings.

[44] An issuer or other soliciting person may, in the course of a solicitation, send several proxy cards to a shareholder. Under the notice and access model, the Notice must accompany each proxy card sent to a shareholder unless the issuer or other soliciting person sends a proxy statement with, or before, the proxy card and by the same medium as the proxy card is sent.

[45] The requirement in Exchange Act Rules 14a–3(b) and 14c–3(a) to furnish annual reports to security holders does not apply to registered investment companies [17 CFR 240.14a–3(b) and

• Additional soliciting materials;[46] and

• Any amendments to such materials that are required to be furnished to shareholders.

In the proposing release, we sought comment on whether reliance on the notice and access model should be limited to particular types of issuers, shareholders, or transactions. The only restriction that we proposed was that the rules should not apply to business combination transactions. Commenters in favor of the notice and access model generally supported broad availability of the notice and access model.[47] Therefore, the new rules permit any issuer to use the notice and access model to disseminate its proxy materials to all types of shareholders, whether registered or beneficial owners, and with respect to any solicitation except those related to business combination transactions.

1. Notice of Internet Availability of Proxy Materials

To notify shareholders of the availability of the proxy materials on an Internet Web site, an issuer relying on the notice and access model must send a Notice to shareholders 40 calendar days[48] or more in advance of the shareholder meeting date or, if no meeting is to be held, 40 calendar days or more in advance of the date that consents or authorizations may be used to effect the corporate actions.[49] We believe that it is important for the Notice to be furnished in a way that brings it to each shareholder's attention. Therefore, no other materials may accompany the Notice except for the notice of a shareholder meeting required under state corporation law.[50] An issuer also may combine the Notice with the state law notice unless state law prohibits such combination.

We have extended the proposed 30-day deadline for delivery of the Notice to a 40-day deadline to provide issuers with time to encourage shareholders who have not executed a proxy to participate in the voting process and to provide shareholders with sufficient time to receive the Notice, request copies of the materials, if desired, and review the proxy materials prior to executing a proxy. Under the new rules, an issuer may send a proxy card 10 calendar days or more after sending the Notice. If an issuer chooses to send a proxy card under this provision, a proxy statement and annual report need not accompany the proxy card.[51] However, if a copy of the proxy statement and annual report do not accompany or precede the proxy card, a copy of the Notice must accompany the proxy card so that shareholders can access the specified Web site without referring to the earlier Notice. This 10-day waiting period is designed to provide shareholders with sufficient time to access the proxy materials, or request a copy of the proxy materials, before the issuer sends a proxy card without an accompanying proxy statement and annual report.

If an issuer chooses to follow the notice and access model, the Notice of Internet Availability of Proxy Materials must include the following information in clear and understandable terms:[52]

• A prominent legend in bold-face type that states:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date].

• This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

• The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].

• If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.''

• The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;

• A clear and impartial identification of each separate matter intended to be acted on and the issuer's recommendations regarding those matters, but no supporting statements;

• A list of the materials being made available at the specified Web site;

• (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;

• Any control/identification numbers that the shareholder needs to access his or her proxy card;

• Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement and annual report; and

• Information on how to obtain directions to be able to attend the meeting and vote in person.

In response to commenters, we have added certain items to this list of permissible Notice information. First, we are clarifying that the Notice must contain instructions on how to access the proxy card. Such information should include any control or identification numbers necessary for the shareholder to execute a proxy, but may not include a means to execute a proxy, such as a telephone number, which would enable the shareholder to execute a proxy without having access to the proxy statement and annual report.

A shareholder's execution of a proxy via an Internet voting platform indicates that the shareholder has access to the Internet and, as such, is able to access the proxy materials electronically under the new rules. Similarly, if a shareholder executes a proxy via a telephone number placed on the Internet Web site which provides electronic access to the proxy materials, that indicates the shareholder has access to the Internet. However, if a telephone number for executing a proxy is placed on the Notice, there can be no assurance that a shareholder executing a proxy by means of that telephone number has access to the Internet Web site. Accordingly, placing such a telephone number on the Notice is not permitted. A telephone number for executing a proxy may, however, be provided on a proxy card sent to shareholders 10 calendar days or more after the Notice was sent because, by that time, a shareholder is likely to have had

240.14c–3(a)]. The rules that we are adopting do not apply to the requirement in Section 30(e) of the Investment Company Act of 1940 [15 U.S.C. 80a–29(e)] and the rules thereunder that every registered investment company transmit reports to shareholders at least semi-annually.

[46] Our rules permit, but do not require, delivery of additional soliciting materials. See Rule 14a–6(b).

[47] See, for example, letters from ABC, ACB, Association of Corporate Counsel (ACC), Proxinvest, SCSGP, STA, and Sullivan & Cromwell.

[48] For purposes of determining this 40-day period under the new rules, the first day of this period would be the day on which the issuer sends the Notice. The 40th day would be the day prior to the meeting date or date of the corporate action.

[49] The Notice could be sent electronically to shareholders who have previously provided affirmative consent, or other evidence to show delivery, pursuant to our earlier guidance on electronic delivery. See the 1995 Interpretive Release and the 2000 Interpretive Release.

[50] The rules also permit a reply card for requesting a paper or e-mail copy of the proxy materials to accompany the Notice.

[51] Of course, an issuer still would be obligated to send a copy of the proxy statement and annual report if a shareholder requests a copy. An issuer also may send a proxy card before the end of the 10-day period if it is accompanied by the proxy statement and annual report.

[52] Appropriate changes must be made to the Notice if the issuer is providing an information statement pursuant to Regulation 14C or seeking to effect a corporate action by written consent.

sufficient time to access the materials on the Internet or request copies.

Also, in response to comments, we have revised the rules to require an issuer or other soliciting person to include instructions in the Notice about: (1) How a shareholder can request delivery of copies of proxy materials in paper or by e-mail in the future; [53] and (2) how to attend the shareholder meeting and vote in person. The new rules also require the Notice to include an Internet Web site on which a shareholder can request a copy of the proxy materials, in addition to a toll-free telephone number and an e-mail address for that purpose.

The Notice may include only the information specified above, unless it is being combined with the state law meeting notice, in which case any information required by state law also may be included in the Notice. While not required, to reduce the chance of parties creating false Notices to extract confidential information from shareholders, the Notice also may contain a statement advising shareholders that they are not required to provide any personal information, other than the identification or control number provided in the Notice (if such a number is used), to execute a proxy.

To ensure that the Notice is clear and understandable, it must meet substantially the same plain English principles as apply to key sections of Securities Act prospectuses pursuant to Securities Act Rule 421(d).[54] Both commenters remarking on the plain English aspect of the proposal supported such a requirement.[55]

Several commenters recommended that issuers should be able to include more information in the Notice than we proposed. They suggested that the rules should allow the Notice to incorporate information from the proxy statement and annual report that those commenters believe is the most important information contained in those documents. They believed that presenting this information on the Notice would enable shareholders to make an informed decision based on the Notice alone.[56] We believe that the proxy statement and annual report to security holders represent the information necessary to make an informed voting decision. The Notice is intended merely to make shareholders aware that these proxy materials are available on an Internet Web site; it is not intended to serve as a stand-alone basis for making a voting decision. Because the disclosures in the proxy statement and annual report represent the information necessary for a voting decision, we do not believe it is appropriate to permit issuers and other soliciting persons to present only selected information from the proxy statement or annual report to security holders in the Notice.

The form of the Notice will constitute other soliciting material that the issuer or other soliciting person must file with the Commission pursuant to Rule 14a–6(b) [57] no later than the date on which it is first sent or given to shareholders.[58]

a. Householding

Consistent with the proposal, the final rules permit an issuer to ''household'' the Notice pursuant to Rule 14a–3(e).[59] Accordingly, an issuer could send a single copy of the Notice to one or more shareholders residing at the same address if the issuer satisfies all of the Rule 14aπ3(e) conditions.[60] An issuer is not required to re-solicit specific consent regarding the householding of the Notice from shareholders if it has obtained their consent to householding of proxy materials in the past. However, an issuer following the notice and access model must allow each householded account to execute separate proxies. Therefore, the issuer must provide separate identification or control numbers, if it uses such numbers, to each account at the shared address, as required by the current householding rule.[61] Alternately, an issuer also may send separate Notices for each householded account in a single envelope. Commenters generally supported this aspect of the proposal.[62]

b. Security and Privacy on the Internet

Several commenters were concerned about security and confidentiality of shareholder information that may be transmitted over the Internet.[63] We believe that the final rules ameliorate many of these concerns. We address those concerns below.

i. Theft of Identification or Control Numbers

Some commenters were concerned that computer hackers may use any identifying information sent to shareholders to access their accounts.[64] The Notice may contain identification or control numbers for executing proxies or providing voting instructions, if an issuer or intermediary uses such numbers. We understand that these numbers, which are in common use today, usually provide the user only with access to execute proxies or provide voting instructions; they do not enable the user to buy or sell securities in a shareholder's account or transfer funds from that account. Thus, more sensitive activities, such as trading securities or transferring funds, could not be performed by someone who has stolen this identifying information. Finally, we note that 85% of shares voted already are voted electronically using such identification or control numbers.

ii. ''Phishing''

One commenter expressed concern that, if Notices are sent electronically, shareholders may be tricked into disclosing personal information to persons fraudulently purporting to be issuers or intermediaries by fake ''phishing'' e-mails purporting to be official Notices, but designed to extract personal information from a shareholder.[65] We do not believe that the rules would provide significant opportunity for abuse through phishing for the following reasons.

First, an issuer may send a Notice by e-mail only if the shareholder has affirmatively consented to such delivery. Second, the Notice is not permitted to request any confidential information from the shareholder. Rather, the only confidential information that a shareholder must provide to access the proxy card would be a confidential identification or

[53] See letters from ABA, Mellon Investor Services (Mellon), and SCSGP.

[54] 17 CFR 230.421(d).

[55] See letters from Florida State Board and Proxinvest.

[56] See letters from Carl Hagberg, Hermes, and James Reed. For example, one commenter suggested that each proposal be accompanied by the ''pros and cons'' associated with that proposal. See letter from James Reed. Another commenter recommended that the president's letter, Management's Discussion and Analysis and selected financial information be included. See letter from Carl Hagberg.

[57] 17 CFR 240.14a–6(b).

[58] See Rule 14a–16(i) [17 CFR 240.14a–16(i)].

[59] 17 CFR 240.14a–3(e).

[60] If the Notice is sent via e-mail, the householding rules do not permit the sending of only one copy of the Notice to all shareholders in the household. Instead the Notice must be separately e-mailed to each shareholder. See Rule 14a–3(e)(1)(ii)(B)(*4*) [17 CFR 240.14a–3(e)(1)(ii)(B)(*4*)].

[61] Issuers also are required to share a listing of the shareholders that have consented to householding with soliciting shareholders, or afford the benefit of such consents to a soliciting shareholder if the issuer is mailing proxy materials on the shareholder's behalf. See Rule 14a–7(a)(2) [17 CFR 240.14a–7(a)(2)].

[62] See letters from BRT, Computershare, Proxinvest, and SCSGP.

[63] See, for example, letters from James Angel, Todd Collier, James Davis, William LaFollette, Matthew McGuire, and USPS.

[64] Record holders could not be subject to such manipulation because they do not hold their securities in a trading account with the company in the same sense as beneficial owners hold their securities in a brokerage account.

[65] See letter from William LaFollette.

control number used by many issuers and intermediaries to track votes. As noted above, this number does not provide access to a shareholder's brokerage or bank account or permit the transfer of funds from a shareholder's account. Therefore, the shareholder's account number and other personal financial information would not be in jeopardy of being stolen. The rules do permit an issuer or other soliciting person to include on the Notice a protective warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy.[66]

iii. Misuse of Information by Issuers and Other Soliciting Persons

Other commenters were concerned that issuers themselves, or other soliciting persons, may use shareholder information inappropriately. For example, they were concerned that an issuer may use shareholders' e-mail addresses for purposes other than proxy communications, such as advertising, or sell the e-mail addresses to third parties.[67] As a protective measure, one commenter suggested that the Internet Web site on which the proxy statement is posted should not require installation of cookies on the shareholder's computer as a prerequisite for access to the Web site.[68]

We agree that shareholder information gathered under the amended rules should be used only for the purposes of furnishing proxy materials to shareholders. Thus, we have revised the final rules to clarify that an issuer or its agent must maintain the Internet Web site on which the proxy materials are posted in a manner that does not infringe on the anonymity of a shareholder accessing that Web site.[69] For example, it may not track the identity of persons accessing that Web site to view the proxy statement.[70] In addition, the Web site cannot require the installation of any ''cookies'' or other software that might collect information about the accessing person. Further, the issuer and its agents may not use any e-mail address obtained from a shareholder for the purpose of requesting a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder. Finally, an issuer may not transfer a shareholder's e-mail address to other persons without the shareholder's express consent, except in connection with the distribution of proxy materials, such as an agent handling the proxy distribution on the issuer's behalf.[71]

2. Proxy Card

Under the notice and access model that we are adopting, an issuer is not permitted to furnish the proxy card together with the initial Notice for a particular solicitation. An issuer following the notice and access model must post the proxy card on the Web site with the proxy statement and any annual report no later than the time at which the Notice is sent to shareholders so that the documents are electronically available at the time shareholders receive the Notice.[72] In addition, on that Web site, the issuer must concurrently provide shareholders with at least one method of executing a proxy vote.[73] We believe that a shareholder who accesses proxy materials on the Internet Web site should be able to execute a proxy as soon as the shareholder is able to electronically access the proxy statement. An issuer may provide a means to execute a proxy through a variety of methods, including by providing an electronic voting platform linked to the Web site where the proxy materials are posted or a telephone number for executing a proxy. Merely providing a shareholder with a means to request a paper proxy card would not be sufficient because a shareholder would not be able to execute a proxy at the time it accesses the proxy materials.

We received a significant number of comments on the aspect of our proposal that would have permitted the proxy card to accompany the Notice. Numerous commenters were concerned that physically separating the card from the proxy statement, as originally proposed, may lead to the type of uninformed voting that the proxy rules are intended to prevent.[74] Some commenters were concerned that issuers may attempt to structure their solicitations in a manner that discourages access to the proxy statement, particularly with respect to shareholder proposals.[75] Others, however, believed that separating the card from the proxy statement would not lead to such problems.[76]

We note these concerns and have revised the rules to require the proxy card to be accessible on the Internet along with the proxy statement and any annual report when the Notice is sent. The issuer may not send a proxy card with its initial Notice. However, we recognize that an issuer may wish to undertake subsequent soliciting activities to encourage shareholders who have not executed a proxy to do so. Currently, issuers often send replacement proxy cards accompanied by additional soliciting materials to shareholders who have not yet voted. To facilitate this re-solicitation process, the rules permit an issuer that is following the notice and access model to send a proxy card 10 calendar days or more after sending the Notice. This 10-day waiting period still provides a 30 day period during which an issuer can encourage shareholders to execute a proxy. Any such subsequent solicitation efforts may, but need not, include a copy of the proxy statement and any annual report to security holders. However, if the subsequent communication includes a proxy card, it also must include either a copy of the proxy statement and any annual report or a copy of the Notice.[77]

3. Internet Web Site Posting of Proxy Materials

All proxy materials to be furnished through the notice and access model, other than additional soliciting materials, must be posted on a specified Internet Web site by the time the issuer sends the Notice to shareholders.[78] These materials must remain on that Web site and be accessible to shareholders through the conclusion of the related shareholder meeting, at no charge to the shareholder. As discussed above, the Notice must identify clearly the Internet Web site address at which the proxy materials are available. The Internet Web site address must be specific enough to lead shareholders directly to the proxy materials,[79] rather

[66] See Rule 14a–16(f)(3) [17 CFR 240.14a–16(f)(3)].

[67] See letter from Thomas Richardson.

[68] See letter from Bowne & Co.

[69] See Rule 14a–16(k)(1) [17 CFR 240.14a–16(k)(1)].

[70] Of course, the issuer would be permitted to track the identity, by means of the shareholder entering an issuer-provided control/identification number, of persons voting on an electronic platform in order to validate the election results.

[71] See Rule 14a–16(k)(2) [17 CFR 240.14a–16(k)(2)]. Rule 14a–16(k) is not designed to create new duties in private rights of action under the federal securities laws.

[72] See Rule 14a–16(b)(1) [17 CFR 240.14a–16(b)(1)].

[73] See Rule 14a–16(b)(4) [17 CFR 240.14a–16(b)(4)].

[74] See, for example, letters from ACB, AFL–CIO, Amalgamated Bank, BellTel Retirees, CII, Florida State Board, Carl Hagberg, NRLN, San Diego Retirement, Swingvote, and Teamsters.

[75] See, for example, letters from AFL–CIO, Florida State Board, and Teamsters.

[76] See, for example, letters from ABA, ACC, BRT, Computershare, ISS, New York State Bar Association (NY State Bar), and Proxinvest.

[77] See Rule 14a–16(h) [17 CFR 240.14a–16(h)].

[78] Additional soliciting materials used after the Notice is sent must be posted on the specified Web site no later than the day on which those materials are first sent or given to shareholders.

[79] This Web site could be a central site with prominent links to each of the proxy-related

Continued

than to the home page or other section of the Web site on which the proxy materials are posted, so that shareholders do not have to browse the Web site to find the materials. The Internet Web site that an issuer uses to electronically furnish its proxy materials to shareholders must be a publicly accessible Internet Web site other than the Commission's EDGAR Web site.[80] Commenters agreed that simply providing a link to the proxy materials on EDGAR was insufficient.[81]

Commenters were divided with respect to the type of document format that issuers or other soliciting persons should be required to use to post proxy materials on the Web site. This disagreement centered on whether most shareholders would prefer to be able to print out the document and read the hard copy version or read the document online. The final rules require the electronically posted proxy materials to be presented on the Internet Web site in a format, or formats, convenient for both printing and viewing online.[82] Under technology commonly in use today, this may require posting the materials in two different formats. First, the materials should be posted in a format that provides a version of those materials, including all charts, tables, graphics, and similarly formatted information, that is substantially identical to the paper version of the materials.

In addition, to take better advantage of the capabilities of the Internet, the materials also must be presented in a readily searchable format, such as HTML. This type of format would make the proxy materials easier to read on a computer screen. In addition, such a version may incorporate additional user-friendly features such as hyperlinks from a table of contents to enable shareholders to quickly and easily navigate through the document. Many Internet Web sites today provide documents in dual formats such as this. We believe this requirement will impose minimal burden on issuers. We also believe that, as technology progresses, new formats may be developed that will improve shareholders' ability to print copies and read copies on their screens. Finally, to the extent a shareholder may need additional software to view the document, the Web site must contain a link to enable the shareholder to obtain the software free of charge.[83]

4. Period of Reliance

The decision by an issuer or other soliciting person to follow the notice and access model is effective only with respect to a particular meeting. An issuer's choice to rely on the notice and access model for one meeting therefore does not affect its determination of whether to rely on the model for subsequent meetings.[84] Similarly, a shareholder that does not request a paper or e-mail copy of the proxy materials for one meeting is not bound by that decision with respect to any other shareholder meeting. Each time an issuer chooses to rely on the notice and access model for a shareholder meeting, it must comply anew with all of the requirements under that model, including delivery of the Notice and the 40-day notice period.

We are adopting one important exception to this general principle. Numerous commenters were concerned that a shareholder desiring a paper or e-mail copy would have to request such a copy every year from each issuer in which he or she owns securities.[85] We agree with commenters that this could be unduly burdensome for a shareholder who owns numerous securities. The commenters recommended that a provision be made that permits a shareholder to make a single election to receive a paper or e-mail copy of the proxy materials on a continuing basis in the future. We agree with those commenters and have revised the rules to enable shareholders to make a permanent election to receive paper or e-mail copies from each issuer.[86]

5. State Law Notices

State business and corporation laws typically set forth shareholder meeting requirements, including meeting notice and voting requirements. The new rules are not intended to affect any applicable state law requirement concerning the delivery of any document related to a shareholder meeting or proxy solicitation. Thus, to the extent that state law requires a notice of shareholder meeting and proxy materials to be delivered by a particular means, the rules do not alter those requirements.[87] For example, if the state in which an issuer is incorporated requires notices of shareholder meetings and proxy materials to be transmitted directly to shareholders in paper, the notice and access model does not provide an issuer with an option to satisfy its state law obligations by posting those materials on an Internet Web site.

6. Additional Soliciting Materials

New Rule 14a–16 and revised Rules 14c–2 and 14c–3 require an issuer to post any additional soliciting materials required to be filed under Rule 14a–6(b) on the same Internet Web site on which the proxy materials are posted no later than the day on which the additional soliciting materials are first sent to shareholders or made public.[88] Beyond the posting of the additional soliciting materials on the Internet Web site, issuers may decide which additional means, if any, are most effective for disseminating these materials (*e.g.*, direct mail, e-mail, newspaper publication, etc.).

7. Requests for Copies of Proxy Materials

An issuer that satisfies its requirement to furnish proxy materials through the notice and access model has a separate requirement under Rule 14a–16(j)[89] to deliver a copy of the proxy statement, annual report to security holders (if applicable) and proxy card to a requesting shareholder. Upon receipt of a request from a shareholder for a copy

disclosure documents listed in the Notice, as well as proxy materials posted on the Web site after the Notice is sent.

[80] An issuer must continue to comply with Rules 14a–6 and 14c–5, which require the soliciting person to file its proxy statement (or information statement) and additional soliciting material with the Commission. An issuer also must continue to comply with Rules 14a–3(c) and 14c–3(b), which require an issuer to submit copies of its annual report to security holders to the Commission. The issuer must comply with these requirements by the time it posts the materials on the Web site.

[81] See letters from James Angel, SCSGP, and Swingvote.

[82] See Rule 14a–16(c) [17 CFR 240.14a–16(c)].

[83] See the 1995 Interpretive Release No. 33–7233, at n. 24 and the accompanying text; Release No. 33–8128 (Sep. 16, 2002) [67 FR 58480]; Release No. 33–8230 (May 7, 2003) [68 FR 25788]; and Release No. 33–8518 (Dec. 22, 2004) [70 FR 1505].

[84] To the extent the Commission adopts the universal Internet availability model in companion Release 34–55147, this option will no longer be available to issuers.

[85] See, for example, letters from ABC, AFL-CIO, James Angel, CALSTRS, Florida State Board, OPERS, San Diego Retirement, SIA, William Sjostrom, Stocklein Law Group, Swingvote, and Paul Uhlenhop.

[86] A shareholder that elects to receive paper or e-mail copies may, in the future, revoke that election. However, an issuer may continue to request that shareholder to accept electronic delivery or the notice and access model or seek that shareholder's affirmative consent to electronic delivery. Nothing in the proxy rules prohibits an issuer from structuring incentives to encourage shareholders to accept electronic delivery or the notice and access model.

[87] See Rule 14a–16(e) [17 CFR 240.14a–16(e)]. Issuers typically include the meeting notices required by state law at the beginning of their proxy statements. As discussed previously, the new rules would permit any information necessary to meet a state law requirement to accompany or be combined with the Notice.

[88] Exchange Act Rule 14a–6(b) requires an issuer or other soliciting person choosing to deliver additional soliciting materials to file them with the Commission, in the same form that they are sent to shareholders, no later than the date that they are first sent or given to shareholders.

[89] 17 CFR 240.14a–16(j).

of the proxy statement, annual report, or proxy card, the issuer must send a copy (in paper or by e-mail, as requested) of those proxy materials to the shareholder within three business days after receiving the request, even if the request is made after the date of the shareholder meeting or corporate action to which the proxy materials relate. However, under the final rules, an issuer would be obligated to provide copies of the proxy materials only up until one year after the conclusion of the meeting or corporate action to which the materials relate. When the issuer provides a paper copy of the proxy materials in response to a shareholder request, the issuer must use first class mail or other reasonably prompt means of delivery.

A few commenters believed that a requirement to send copies of the proxy statement after the shareholder meeting has been held would be an unnecessary burden.[90] However, the proxy statement contains a portion of the total package of annual disclosure for public companies; in fact, many public companies satisfy their obligation to include information in Part III of the Form 10–K by including the information in their proxy statements and incorporating that information by reference into the Form 10–K.[91] Just as the proxy rules require issuers to undertake in their proxy statements or annual reports to shareholders to provide copies of annual reports on Form 10–K for the most recent fiscal year to requesting shareholders,[92] we believe it is appropriate to require issuers to provide copies of the proxy materials to requesting shareholders even after the shareholder meeting date. However, because the proxy statement (like the Form 10–K) is filed on EDGAR, we believe there should be a limit on the length of the period during which a shareholder may request a copy of the proxy materials from the issuer. Therefore, the final rules require issuers to provide the proxy statement and annual report to security holders only for one year after the conclusion of the meeting to which those materials relate.[93]

We agree with the views of commenters that the proposed two-business day timeframe may be too short for issuers to respond efficiently to paper requests of the proxy materials.[94] Further, it is likely that a longer response period that enables an issuer to better cumulate batches of copies would reduce the cost of complying with the rules. However, these concerns must be balanced against our view that requests for copies be handled promptly. Thus, we have extended the response time to three business days.[95]

The requirements that an issuer deliver the Notice at least 40 calendar days before the shareholder meeting date and respond to a request for a copy of the proxy materials within three business days are designed to provide a shareholder with sufficient time to request a copy, receive it, review the proxy materials and make an informed voting decision. Several commenters believed that placing a deadline on shareholders to request copies would be appropriate.[96] We do not believe such a deadline would be appropriate, particularly because the proxy statement is part of the ''package'' of disclosures we have deemed important for investors, as discussed above. However, under the rules, it is incumbent on the shareholder to request a copy in sufficient time to receive the copy of the proxy materials, review that copy, and execute a proxy. The rules require the issuer to insert a date in the Notice by which a shareholder should request a copy to ensure timely delivery.[97]

Finally, we recognize that some issuers may be hesitant to adopt the notice and access model because of the potential dangers of significantly underestimating, or overestimating, the number of paper copies of the proxy materials that will be needed. If an issuer underestimates that number, the cost of printing additional copies may be great. Similarly, overestimating that number would lead to unnecessary cost. We note that there is nothing in the rules that would prevent an issuer from sending a shareholder a communication well in advance of a proxy solicitation to determine the shareholder's interest in receiving paper copies.[98] Indeed, such a communication may be used to start creating a list of shareholders that wish to receive paper copies in the future. This may help issuers to estimate the number of paper copies that it needs to print for the solicitation.

B. The Role of Intermediaries

1. Background

The process of distributing proxy materials to beneficial owners is considerably more complicated than direct delivery of the materials by an issuer to its record holders.[99] The proxy rules include four rules, Exchange Act Rule 14a–13, Rule 14b–1, Rule 14b–2, and Rule 14c–7 referred to collectively as the ''shareholder communications rules,'' that impose obligations on issuers and intermediaries to ensure that beneficial owners receive proxy materials and are given the opportunity to participate in the shareholder voting process. Basically, these rules require issuers to send their proxy materials to intermediaries for forwarding to the beneficial owners.

Exchange Act Rule 14b–1 sets forth the obligations of registered brokers and dealers in connection with the prompt forwarding of certain issuer communications to beneficial owners. Rule 14b–2 sets forth similar obligations of banks, associations, and other entities that exercise fiduciary powers. Under these rules, upon request by the issuer, these intermediaries are required to indicate to the issuer within seven business days of receiving the request:

- The approximate number of customers of the intermediary that are beneficial owners of the issuer that are held of record by the intermediary;
- If the issuer has indicated pursuant to Rule 14a–13(a) [100] or 14c–7(a) [101] that it will distribute the annual report to security holders to beneficial owners who have not objected to disclosure to the issuer of their names, addresses, and securities positions, the number of beneficial owners who have objected to such disclosure; [102] and
- The identity of any agents of the intermediary acting on the intermediary's behalf to fulfill its obligations under the rule.

Pursuant to Rules 14b–1 and 14b–2, within five business days of receiving

[90] See letters from BRT and SCSGP.

[91] See Instruction G(3) to Form 10–K, referenced in 17 CFR 249.310.

[92] See Rule 14a–3(b)(10) [17 CFR 240.14a–3(b)(10)].

[93] See Rule 14a–16(j)(3) [17 CFR 240.14a–16(j)(3)].

[94] See, for example, letters from BRT, Computershare, ICI, NY State Bar, SCSGP, SIA, and Sullivan & Cromwell.

[95] See letters from Computershare, ICI, and STA.

[96] See letters from Computershare, SCSGP, and Sullivan & Cromwell.

[97] See Rule 14a–16(d)(1) [17 CFR 240.14a–16(d)(1)]. This date is intended to be a recommendation to shareholders to facilitate timely delivery, but does not restrict a shareholder's ability to request copies after that date.

[98] A communication to shareholders that is limited to explaining the notice and access model generally and determining whether shareholders wish to receive future proxy materials in paper or by e-mail would not be associated with a particular solicitation and therefore would not be considered a Notice under the new rules.

[99] The discussion in this section of ''beneficial owners'' refers to beneficial owners whose names and addresses do not appear directly in issuers' stock registers because they hold their securities through a broker, bank, trustee, or similar intermediary.

[100] 17 CFR 240.14a–13(a).

[101] 17 CFR 240.14c–7(a).

[102] In the case of bank intermediaries, Rule 14b–2 requires a bank to disclose the number of customers with accounts opened on or before December 28, 1986, who gave affirmative consent to disclosure to the issuer and the number of customers with accounts opened after December 28, 1986, who did not object to such disclosure.

proxy materials from the issuer, the intermediary must forward the materials to beneficial owners who will not receive those materials directly from the issuer pursuant to Rule 14a–13(c)[103] or Rule 14c–7(c).[104] Beneficial owners typically do not execute proxy cards because, under most state laws, only the record owner (*i.e.*, the intermediary) has the authority to vote on matters presented to shareholders. As a result, intermediaries forward the proxy materials, other than the proxy card, along with a request for voting instructions. The request for voting instructions is similar to the proxy card, but is prepared by the intermediary instead of the issuer and the beneficial owner returns his or her voting instructions to the intermediary rather than to the issuer or independent vote tabulator. The intermediary is required to vote the beneficial owner's shares in accordance with the owner's voting instructions when formally executing the proxy card.[105] The intermediary then returns the proxy card to the issuer or its vote tabulator.

2. Discussion of the Amendments

Under the amendments, an intermediary may follow the notice and access model only if the issuer requests it to do so and, in such cases, must follow that model. The amendments revise Rules 14b–1 and 14b–2 to require brokers, banks, and similar intermediaries, at the request of an issuer, to furnish proxy materials, including a Notice of Internet Availability of Proxy Materials, to beneficial owners of the issuer's securities based on the notice and access model.[106] If an issuer does not request intermediaries to follow the notice and access model, an intermediary could, on its own initiative, continue to rely on any other permitted method of furnishing proxy materials to beneficial owners, including the electronic delivery of proxy materials by affirmative consents, but could not follow the notice and access model on its own initiative. Comments varied on whether an intermediary should be allowed to follow the notice and access model on its own initiative.[107] We believe that the issuer should be allowed to determine the best means for distributing its proxy materials, because the issuer ultimately pays the costs of that distribution.

With respect to beneficial owners, an issuer or other soliciting person relying on the notice and access model must provide the intermediary with all information necessary for the intermediary to prepare its own Notice of Internet Availability of Proxy Materials in sufficient time for the intermediary to prepare and send its Notice to beneficial owners at least 40 days before the meeting date.[108] We understand that issuers, intermediaries and their agents currently coordinate a similar exchange of information to enable intermediaries to prepare and print requests for voting instructions ahead of their receipt of the proxy statement and annual report to security holders for forwarding to beneficial owners.[109] We expect such coordination to continue to facilitate timely preparation of the intermediary's Notice. Therefore, we have not included a specific timeframe in the rules for delivery of this information.[110] Upon receipt of that information, the intermediary or its agent must prepare its own Notice, tailored for the intermediary's beneficial owner customers.[111] The intermediary must send this Notice to beneficial owners at least 40 calendar days before the date of the shareholder meeting.[112]

The intermediary's Notice will generally contain the same information as an issuer's Notice,[113] with certain revisions to reflect the differences between registered holders and beneficial owners. Specifically, the intermediary's Notice must contain the following information:

- A prominent legend in bold-face type that states:

Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].[114]

- This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.
- The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].
- If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.''

- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on and the issuer's or other soliciting person's recommendations regarding those matters, but no supporting statements; and
- A list of the materials being made available at the specified Web site.

The intermediary may choose whether to direct beneficial owners to the issuer's Web site or to its own Web site to access the proxy disclosure materials. If it directs beneficial owners to its own Web site, access to that website must be free of charge and may not compromise a beneficial owners' anonymity. If it directs beneficial owners to the issuer's Web site, the intermediary must inform beneficial owners that they can submit voting instructions to the intermediary, but cannot execute a proxy directly in favor of the issuer unless the intermediary has executed a proxy in favor of the beneficial owner. In addition, the intermediary must provide the following information in its Notice, which is similar to the information in the issuer's Notice, but applicable only to beneficial owners:

- (1) A toll-free telephone number of the intermediary or its agent, (2) an e-mail address of the intermediary or its agent, and (3) an Internet Web site of the intermediary or its agent where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;

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[103] 17 CFR 240.14a–13(c).

[104] 17 CFR 240.14c–7(c).

[105] See Rule 14b–2(b)(3) [17 CFR 240.14b–2(b)(3)].

[106] See Rules 14b–1(d) and 14b–2(d) [17 CFR 240.14b–1(d) and 240.14b–2(d)].

[107] See, for example, letters from ABA, ACC, Computershare, and SCSGP, supporting issuer control, as opposed to the letters from SIA, Swingvote, and University Bancorp, urging more control by intermediaries.

[108] See Rule 14a–16(a)(2) [17 CFR 240.14a–16(a)(2)].

[109] Our rules set forth a series of timeframes regarding distribution of proxy materials to beneficial owners to facilitate timely delivery of those materials.

[110] Rule 14a–16(a)(2) requires an issuer to provide the information to an intermediary ''in sufficient time'' for the intermediary to prepare its own Notice. Other soliciting persons would be expected to provide their information to intermediaries in sufficient time to meet their applicable deadlines.

[111] An intermediary's Notice prepared in accordance with this rule would be impartial for purposes of Rule 14a–2(a)(1) [17 CFR 240.14a–2(a)(1)] and need not be filed pursuant to Rule 14a–6(b) [17 CFR 240.14a–6(b)] unless an intermediary solicits proxies on its own behalf.

[112] In the case of a Notice of a soliciting person other than the issuer, the intermediary must send the Notice to beneficial owners by the later of: (1) 40 calendar days prior to the meeting; or (2) 10 calendar days after the issuer first sends its proxy materials to investors. See Section II.C of this release.

[113] See Rule 14a–16(d) [17 CFR 240.14a–16(d)].

[114] Appropriate changes must be made to the Notice if the issuer is providing an information statement pursuant to Regulation 14C or if the issuer or other soliciting person is seeking to effect a corporate action by written consent.

• Any control/identification numbers that the beneficial owner needs to access his or her request for voting instructions;

• Instructions on how to access the request for voting instructions on the Web site of the intermediary or its agent, provided that such instructions do not enable a beneficial owner to provide voting instructions without having access to the proxy statement and annual report;

• Information on how to obtain directions to be able attend the meeting and vote in person; [115] and

• A brief description, if applicable, of the rules that permit the intermediary to vote the securities if the beneficial owner does not return his or her voting instructions.[116]

The intermediary's Notice must contain instructions on how to access the request for voting instructions on the Web site of the intermediary or its agent. Such information should include any control or identification numbers necessary for the beneficial owner to provide voting instructions. However, the intermediary's Notice cannot include a means, such as a telephone number, which would enable the beneficial owner to provide voting instructions without having access to the proxy statement and annual report. A telephone number that a beneficial owner can use to provide voting instructions may be provided on the Internet Web site on which the request for voting instructions is posted (as well as on a paper request for voting instructions sent to shareholders 10 days or more after the intermediary's Notice was sent). Like an issuer, the intermediary cannot include a request for voting instructions with its Notice. However, at the issuer's request, the intermediary will be required to send a copy of the request for voting instructions to beneficial owners, provided that 10 days have passed since the intermediary's Notice was first sent. A copy of the intermediary's Notice, or a copy of the proxy statement, must accompany that request for voting instructions.

3. Request for Copies by Beneficial Owners

The intermediary's Notice must provide instructions on how a beneficial owner can request a copy of the proxy materials from the intermediary, rather than from the issuer. Under the new rules, a beneficial owner may not request a paper or e-mail copy directly from the issuer as originally proposed. We are making this revision to the proposal for several reasons. First, an issuer has no means to track the identity and preferences of beneficial owners for future solicitations because these owners are not registered in an issuer's records as shareholders of the company. This tracking can be performed most efficiently by the intermediary because only it maintains records of the beneficial owner's security holdings. Second, the intermediary is able to apply a beneficial owner's request for paper or e-mail copies across all of a beneficial owner's security holdings on an account-wide basis, making it easier for beneficial owners to elect to receive such copies with respect to all of the securities held by the beneficial owner.

If a beneficial owner requests a copy of the materials from the intermediary, the intermediary must in turn request such a copy from the issuer or other soliciting person within three business days of receiving the request from the beneficial owner. The intermediary also would have to forward the materials to the beneficial owners within three business days after receipt from the issuer or other soliciting person.[117] As originally proposed, the intermediary will be allowed to charge the issuer or other soliciting person for the cost it incurs in forwarding the copy of the proxy materials to the requesting beneficial owner.[118]

We also note that intermediaries typically keep records of whether a beneficial owner has affirmatively consented to electronic delivery of proxy materials on an account-wide basis. That is, a beneficial owner's election for electronic delivery applies to all securities in the beneficial owner's account, rather than to specific issuers. To make it clear to beneficial owners electing to receive copies of the proxy materials on an ongoing basis, the intermediary's Notice must clarify that a permanent election to receive copies of the proxy materials in paper or e-mail will apply to all securities in the beneficial owner's account.[119]

One commenter was concerned that the notice and access model only complicates an already complicated process for transmitting proxy materials to beneficial owners and may confuse shareholders.[120] Other commenters recommended that the Commission review the proxy delivery process as a whole, rather than layer this model over the existing distribution regime.[121] Although the Commission is sensitive to these concerns, a complete review of the proxy system at this time would only delay the potential benefits to issuers and shareholders offered by the notice and access model. As we gain additional experience with these rules, we will consider whether more extensive revisions to the proxy rules are warranted.

In summary, the amendments would impose the following responsibilities on intermediaries that are requested by an issuer to follow the notice and access model:

• The intermediary must prepare its own Notice and deliver this Notice to its beneficial owners after receiving the meeting information from the issuer or other soliciting person;

• The intermediary must send its Notice to beneficial owners at least 40 days prior to the meeting;

• The intermediary must post its request for voting instructions on an Internet Web site;

• The intermediary must maintain records of beneficial owners who make a permanent election to receive paper or e-mail copies of the proxy materials for all securities held in the beneficial owner's account; and

• The intermediary must request a copy of the proxy materials from the issuer or other soliciting person within three business days after receiving a request from its beneficial owner customer and must forward that copy to the beneficial owner customer within three business days after receiving the

[115] A beneficial owner wishing to attend the meeting and vote in person must obtain proxy voting authority from the intermediary through which he or she owns the security.

[116] See NYSE Rule 452.

[117] Thus, the intermediary must request the copy from the issuer within three business days of receiving the shareholder's request. Then the issuer must send the copy to the intermediary, which is a record holder or respondent bank under the final rules, within three business days of receiving the intermediary's request. Finally, the intermediary is required to forward the copy to the requesting shareholder within three business days of receiving the copy from the issuer.

[118] See NYSE Rule 465. We note that a Proxy Working Group established by the NYSE is reviewing the NYSE's current schedule of the specific maximum fees that NYSE member firms can charge an issuer under our rules requiring issuers to reimburse intermediaries for their reasonable direct and indirect expenses for forwarding proxy materials. We intend to work closely with the NYSE to evaluate the types of revisions that may be appropriate in light of our adoption of the notice and access model, including revision of existing fees as well as the creation of any new fees that may be reasonable under the notice and access model. Although NYSE Rule 465 applies only to NYSE member firms, other national securities exchanges have a similar rule and fee schedule. Non-broker intermediaries, such as banks, also rely on the fee schedule as an industry standard.

[119] See Rules 14b–1(d)(4)(iii) and 14b–2(d)(4)(iii) [17 CFR 240.14b–1(d)(4)(iii) and 240.14b–2(d)(4)(iii)].

[120] See letter from ABA.

[121] See, for example, letters from BRT, Concerned Shareholders, Computershare, Carl Hagberg, Mellon, and STA.

copy from the issuer or other soliciting person.

C. Soliciting Persons Other Than the Issuer

Under the amendments, a person other than the issuer who undertakes his or her own proxy solicitation also can rely on the notice and access model. This situation typically would occur in the context of a proxy contest between a shareholder and management. We anticipate that the notice and access model will provide an alternative that may decrease significantly the printing and mailing costs associated with a proxy solicitation. We also believe that the same arguments that support modifying the existing framework to facilitate an alternative dissemination option for issuers apply equally to soliciting persons other than issuers.

Several commenters supported extending the notice and access model to such parties.[122] However, some commenters were concerned about the possibility of abuse of the model by shareholders conducting nuisance contests.[123] These commenters recommended that the availability of the model be limited for soliciting persons other than the issuer.[124] The proposed limitations included requiring the solicitation of all shareholders,[125] requiring soliciting persons other than the issuer to provide copies of their proxy materials upon request,[126] and imposing a minimum shareholding requirement in order for a soliciting person to take advantage of the model.[127] Although the amendments would reduce the cost of a proxy contest, they do not eliminate all costs, such as costs of preparing the soliciting materials, legal fees, proxy solicitor fees, and other significant soliciting expenses. We believe these surviving costs should discourage frivolous contests.

Although the mechanics of a solicitation under the notice and access model for a person other than the issuer are similar to those incurred by an issuer, we describe below several important differences in the way the amendments affect soliciting persons other than the issuer.

[122] See, for example, letters from CALSTRS, Computershare, and Swingvote.

[123] See, for example, letters from Glen Buchbaum.

[124] See, for example, letters from ABA, ACC, BRT, ICI, ISS, Sullivan & Cromwell, and Swingvote.

[125] See letters from BRT and Swingvote.

[126] See letter from ABA.

[127] See letters from ABA, ICI and Sullivan & Cromwell.

1. Mechanics of Proxy Solicitations by Persons Other Than the Issuer

The proxy rules currently treat persons other than the issuer differently from the issuer in a significant respect regarding the provision of information to shareholders regarding intended corporate actions. Specifically, an issuer must furnish to each shareholder either a proxy statement, if the issuer is soliciting proxies or consents from shareholders, or an information statement pursuant to Section 14(c) of the Exchange Act [128] regarding shareholder meetings where corporate action is to be taken but no proxy authority or consent is sought.

Soliciting persons other than the issuer are not subject to the requirements of Section 14(c). Thus, unlike the issuer, they have no obligation to furnish an information statement to shareholders from whom no proxy authority is sought. As a result, soliciting persons can limit the cost of a solicitation by soliciting proxies only from a select group of shareholders, such as those with large holdings, without furnishing other shareholders with any information. This enables a person other than the issuer to conduct a proxy contest in a variety of ways, some of which are not available to an issuer. The amendments that we are adopting relate only to the means of furnishing information to shareholders, and thus do not affect a soliciting person's ability to effect such targeted solicitations.

Under the new rules, a soliciting person other than the issuer may follow the same procedures as the issuer.[129] In particular, it may furnish a Notice and post the proxy statement on an Internet Web site. As with an issuer, such a soliciting person may not include a proxy card with the Notice. It may, however, send a proxy card to the shareholders it is soliciting without a proxy statement 10 calendar days or more after initially sending the Notice to them, if the proxy card is accompanied either by a copy of the proxy statement or by another copy of the Notice.

A soliciting person other than the issuer may selectively solicit shareholders under the notice and access model, just as it could under the current proxy rules (e.g., the soliciting person could choose to send the Notice only to certain shareholders, such as those owning more than a specified number of shares). As we discuss in more detail below, we have made revisions to Rule 14a–7 that will enable a soliciting person to distinguish between shareholders who have requested paper copies of the proxy materials and those who have not.[130] Under the notice and access model, a soliciting person other than the issuer may choose to send a Notice only to those shareholders who have not requested paper copies of the proxy materials.

In the proposing release, we proposed a provision that would have permitted a soliciting person other than the issuer to send a Notice that would condition the solicitation on a shareholder's willingness to access the proxy materials on an Internet Web site. One commenter suggested that a soliciting person should not be permitted to condition its solicitation in this manner and should have to provide a copy of its proxy statement to a requesting shareholder.[131] We are persuaded that a shareholder receiving a Notice reasonably may conclude that he or she is entitled to receive a copy of the materials. Therefore, the final rules require a soliciting person other than an issuer to send a paper or e-mail copy of the proxy statement to any requesting shareholder to whom it has sent a Notice.[132]

2. Timeframe for Sending Notice of Internet Availability of Proxy Materials

A solicitation in opposition to the issuer's proposals to be voted on at a shareholder meeting often is not initiated until after the issuer has filed its proxy statement. As we noted in the proposing release, we therefore believe that it may be unfair to apply the same timeframe for distributing the Notice to soliciting persons as the timeframe that applies to issuers. Therefore, the amendments require a soliciting person other than the issuer that is following the notice and access model to send out its Notice by the later of: (1) 40 Calendar days prior to the meeting; or (2) 10 calendar days after the issuer first sends out its proxy statement or Notice to shareholders. This is substantially the

[128] 15 U.S.C. 78n(c).

[129] As with the case of an issuer, the soliciting person also may solicit shareholders concurrently by any other means, for example, by sending a proxy statement and proxy card to certain shareholders.

[130] 17 CFR 240.14a–7.

[131] See letter from ABA.

[132] The proposing release also discussed the possibility of an electronic-only solicitation in which the soliciting person publishes a communication pursuant to Rule 14a–12 [17 CFR 240.14a–12], but does not send any Notices to shareholders. We are not adopting the electronic-only option that we discussed in the proposing release as part of the notice and access model. However, as noted in the final rules, the amendments do not affect the availability of any existing means by which an issuer or other person may furnish proxy materials under the proxy rules.

same requirement we proposed, except that we have changed the proposed 30-day deadline to 40 days to conform it to our revision of the deadline for issuers.

3. Content of the Notice of Internet Availability of Proxy Materials of a Soliciting Person Other Than the Issuer

The content of the Notice sent by a soliciting person other than the issuer could be different from the content of the issuer's Notice. For example, if a solicitation in opposition is launched before the issuer has sent its own proxy statement or Notice, the full shareholder meeting agenda may not be known to the soliciting person at the time it sends its Notice to shareholders. In such a case, the soliciting person must include the agenda items in its Notice only to the extent known.[133]

Also, there may be circumstances in which a person soliciting proxies in opposition to the issuer may provide a partial proxy card, that is, a proxy card soliciting proxy authority only for the agenda items in which the soliciting person is interested rather than for all of the items, or presenting only a partial slate of directors. Typically, such a proxy would revoke any previously-executed proxy and the shareholder may lose his or her ability to vote on matters or directors other than those presented on the soliciting person's card. To prevent a shareholder from unknowingly invalidating his or her vote on those other matters, a person soliciting in opposition that is presenting such a card to shareholders must indicate clearly on its Notice whether execution of that card will invalidate the shareholder's earlier vote on the other matters or directors reflected on the issuer's proxy card.

4. Shareholder Lists and the Furnishing of Proxy Materials by the Issuer

Exchange Act Rule 14a–7 sets forth the obligation of issuers either to provide a shareholder list to a requesting shareholder or to send the shareholder's proxy materials on the shareholder's behalf. That rule provides that the issuer has the option to provide the list or send the shareholder's materials, except when the issuer is soliciting proxies in connection with a going-private transaction or a roll-up transaction.[134] Under the amendments, if the issuer is providing its shareholder list to a soliciting person, the issuer would be required to indicate which of those shareholders have permanently requested paper copies of proxy materials.[135] The proposed rules would have required an issuer to share all information about its shareholders regarding electronic delivery. We have decided to limit this requirement.

One commenter was concerned that a requirement to share information on affirmative consents may violate the issuer's privacy policies and the terms of the consent agreement between the issuer and shareholder.[136] The commenter also was concerned about divulging employees' internal company e-mail addresses. We agree with this comment and are not adopting that aspect of the proposal. However, the new rules do require an issuer to share information regarding whether a shareholder has made a permanent election to receive paper copies of the proxy materials. Such disclosure would not necessitate disclosure of a shareholder's e-mail address. In addition, a shareholder who has made a permanent election to receive paper copies of the issuer's proxy materials might reasonably expect to receive paper copies of proxy materials from other soliciting persons. Once that shareholder has made a permanent election, he or she should not be required to ask again for a paper copy of proxy materials.[137]

Similarly, if, under Rule 14a–7, the issuer elects to send the soliciting person's proxy materials, the amendments require the issuer to refrain from forwarding the other soliciting person's Notice to any shareholder who has made a permanent election to receive paper copies.[138] If the soliciting person requests that the issuer follow the notice and access model, the soliciting person would be responsible for providing the issuer with copies of its Notice for all shareholders to whom it intends to provide a Notice. In that case, the issuer would have to send the soliciting person's Notice with reasonable promptness after receipt from the soliciting person. An issuer could not decide on its own whether to send a soliciting person's materials in paper or electronically. If the other soliciting person wishes to send a proxy card to shareholders 10 or more days after it first sends the Notice, the issuer would be required to forward those proxy cards in a similar fashion.[139]

5. The Role of Intermediaries With Respect to Solicitations by Persons Other Than the Issuer

Intermediaries generally furnish proxy materials to beneficial owners on behalf of soliciting persons other than the issuer under the conditions set forth in Exchange Act Rules 14b–1 and 14b–2.[140] Although intermediaries historically have transmitted a soliciting person's proxy materials in reliance on the procedures set forth in Rules 14b–1 and 14b–2, these two rules do not explicitly address an intermediary's obligations with respect to the forwarding of a soliciting person's proxy materials. As proposed, the amendments clarify that intermediaries are obligated to send proxy materials on behalf of soliciting persons other than the issuer.

D. Business Combination Transactions

As adopted, the notice and access model is not available with regard to proxy materials related to a business combination transaction, which includes transactions covered by Rule 165 under the Securities Act,[141] as well as transactions for cash consideration requiring disclosure under Item 14 of Schedule 14A. Several commenters[142] agreed that business combination transactions constitute highly extraordinary events for some issuers and frequently involve an offering of securities that must be registered under the Securities Act and require delivery of the prospectus.[143] They also typically involve proxy statements of considerable length and complexity. Other commenters nonetheless believed that the model should be extended to such transactions.[144] They noted that

[133] See Rule 14a–16(l)(3)(i) [17 CFR 240.14a–16(l)(3)(i)].

[134] See Exchange Act Rule 14a–7(b) [17 CFR 240.14a–7(b)]. If the issuer is soliciting proxies in connection with a going-private transaction or a roll-up transaction, the shareholder has the option to request the shareholder list or have the issuer send its materials.

[135] See proposed Note 3 to Exchange Act Rule 14a–7.

[136] See letter from SCSGP.

[137] As noted above, this election would be effective until a shareholder revokes that election.

[138] The other soliciting person could, of course, provide paper copies of the proxy statement and proxy card to the issuer for forwarding to those shareholders who have elected to receive paper copies.

[139] As noted above, the issuer may alternatively provide the other soliciting person with a list of shareholders pursuant to Rule 14a–7.

[140] See Randall S. Thomas & Catherine T. Dixon, Aranow & Einhorn on Proxy Contests for Corporate Control, at § 8.03(C) (3d ed. 2001).

[141] 17 CFR 230.165. This prohibition would extend to persons who solicit proxies that are not parties to the transaction and any proxy materials in opposition to the transaction.

[142] See, for example, letters from ABA, Hermes, and Sullivan & Cromwell.

[143] The prospectus delivery requirements applicable to business combination transactions were not impacted by our securities offering reform initiative because such transactions were excluded. See Release No. 33–8591 (July 19, 2005) [70 FR 44271].

[144] See, for example, letters from BRT, CALSTRS, Computershare, ICI, ISS, McData Corp, NY State Bar, Swingvote, SCSGP, William Sjostrom, and University Bancorp.

even more savings may be realized by extending the model to such larger documents. The Commission desires to gain more experience with the notice and access model before extending it to business combination transactions. Based on our experience with the model once it is being used for more straightforward corporate actions, we will consider at a later date whether it is appropriate to extend the model to business combination transactions.

E. Compliance Date and Monitoring

No issuer may send a Notice to shareholders before July 1, 2007. Issuers and intermediaries typically hire third parties to handle the logistics of proxy distribution. These companies will require time to adjust their systems to accommodate the notice and access model. Therefore, an issuer may not use the new model for meetings before August 10, 2007 because of the 40-day deadline. Similarly, if an issuer's meeting will be on or after August 10, 2007, it may only send the Notice on or after July 1, 2007, even if the issuer wishes to send the Notice more than 40 days prior to the meeting date.

We desire to track the industry's experience with the notice and access model to determine whether the rules are achieving their intended purposes. However, we do not currently intend to impose a requirement for issuers and other parties to provide us with data and experiences with the model. We welcome information from issuers and all other parties involved in the proxy distribution process about their experience with the notice and access model on a voluntary basis. Such information would include itemized costs of proxy solicitation before and after adoption of the model, shareholder voting data before and after adoption, the number of copies requested, and any problems encountered with implementing the program. Although such information may be aggregated with the data and experiences of others and presented to the public, we do not intend to divulge the identity of responding parties.

IV. Conforming and Correcting Revisions to the Proxy Rules

The adopted rules reflect numerous amendments to terms used in the current proxy rules to explicitly accommodate the notice and access model. The changes are as follows:

- We substitute the term ''send'' and other tenses of the verb for the term ''mail'' and its other tenses to avoid any misunderstanding that ''mail'' means only paper delivery through the U.S. mail system.[145]
- We clarify that the term ''address'' includes an electronic mail address.[146]

Furthermore, we clarify the use of the term ''annual report(s)'' in the proxy rules by changing all references to either ''annual report(s) to security holders'' or ''annual report(s) on Form 10–K and/or Form 10–KSB,'' as appropriate.[147] Finally, we are updating Rule 14a–2 and Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–SAR to revise outdated references to Exchange Act Rule 14a–11, which the Commission rescinded in 1999.[148]

V. Paperwork Reduction Act

A. Background

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[149] We published a notice requesting comment on the collection of information requirements in the proposing release, and submitted requests to the Office of Management and Budget for approval in accordance with the PRA.[150] These requests were approved by OMB. Some of the revisions that we are making to the original proposal affect these collections of information. We will submit requests for approval of the revisions to OMB. We are requesting comment in this release with respect to these revisions.

The titles for the collections of information are:[151]

Regulation 14A (OMB Control No. 3235–0059)

Regulation 14C (OMB Control No. 3235–0057)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Amendments

The amendments will apply to a particular issuer or other soliciting person only if the issuer or soliciting person voluntarily chooses to rely on the notice and access model. However, if the issuer or soliciting person opts to rely on the new alternative model, compliance with the components of the model is mandatory. The Notices, the proxy materials posted on the Web site, and copies of the proxy materials sent in response to shareholder requests will not be kept confidential.

The Notice must include the following prominent legend in bold-face type and other information described below:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].[152]

- This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.
- The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].
- If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.''

- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted upon and the issuer's or other soliciting person's recommendations regarding those matters, but no supporting statements;

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[145] Rules 14a–4(c)(1), 14a–8(e)(2), 14a–8(e)(3), 14a–8(m)(3), 14a–13(a)(5), 14a–13(c), 14b–1(c)(2)(ii), 14b–2(c)(2)(ii), 14c–5(a) and 14c–7(a)(5). Also Note 2 to Rule 14a–13(a), Instruction 2 to paragraph (d)(2)(ii)(L) of Item 7 of Rule 14a–101, Note 2 to Rule 14c–7(a) and Instruction 1 to Item 4 of Rule 14c–101.

[146] Rules 14a–7(f), 14a–13(e), 14b–1(a)(2) and 14b–2(a)(4).

[147] Rules 14a–3(b)(1), 14a–3(b)(10), 14a–3(b)(13), 14a–3(e)(1)(i), 14a–3(e)(1)(i)(A), 14a–3(e)(1)(i)(B), 14a–3(e)(1)(i)(C), 14a–3(e)(1)(i)(E), 14a–3(e)(1)(ii)(A), 14a–3(e)(1)(ii)(B)(*2*), 14a–3(e)(1)(ii)(B)(*2*)(*ii*), 14a–3(e)(1)(ii)(B)(*2*)(*iii*), 14a–3(e)(1)(ii)(B)(*3*), 14a–3(e)(1)(iii), 14a–3(e)(2), 14a–3(e)(2)(i), 14a–3(e)(2)(ii), 14a–12(c)(1), 14b–1(b)(2), 14b–1(c)(2)(ii), 14b–1(c)(3), 14b–2(b)(3), 14b–2(c)(2)(ii), 14b–2(c)(4), 14c–2(a)(2), 14c–3(a)(1) and 14c–3(c). Also Note to paragraph (e)(1)(i)(B) of Rule 14a–3, Note D(3) to Rule 14a–101, Note G(1) to Rule 14a–101, Instruction 1 to paragraph (d)(2)(ii)(L) of Item 7 of Rule 14a–101, paragraph (e)(2) of Item 14 of Rule 14a–101, Item 23 of Rule 14a–101, paragraph (a), (b), (c) and (d) of Item 23 to Rule 14a–101, Note 1 to paragraph (b)(2) of Rule 14b–1, Note 1 to paragraph (b)(3) of Rule 14b–2, section heading to Rule 14c–3, Item 5 of Rule 14c–101 and paragraph (a), (b), (c) and (d) of Item 5 of Rule 14c–101.

[148] See Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408].

[149] 44 U.S.C. 3501 *et seq.*

[150] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[151] In the proposing release, we described the proposed Notice of Internet Availability of Proxy Materials as a new collection of information, rather than a part of our existing collections of information related to Regulations 14A and 14C. However, we subsequently submitted to OMB a PRA analysis based on revisions to the Regulation 14A and Regulation 14C collections. Based on our burden estimates associated with the Notice, the collection of information approved by OMB related to revisions to existing collections of information (Regulations 14A and 14C) and therefore we refer to those collections of information in this PRA discussion.

• A list of the materials being made available at the specified Web site;
• (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;
• Any control/identification number that the shareholder needs to access his or her proxy card;
• Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement and annual report; and
• Information on how to obtain directions to be able to attend the meeting and vote in person.

Intermediaries must provide a similar notice to beneficial owners. We expect that all of the factual information required to appear in the Notice will become available as part of the ordinary preparations for a shareholder meeting.

C. Comments on PRA Estimates

We requested comment on the PRA analysis contained in the proposing release. In the proposing release, we estimated the annual burden for an issuer or other soliciting person to prepare a Notice to be approximately 1.5 hours. We estimated that 75% of the burden would be prepared by the issuer and that 25% of the burden would be prepared by outside counsel retained by the issuer at an average cost of approximately $300 per hour.[153] Based on our receipt of 7,301 filings on Schedule 14A and 681 filings on Schedule 14C during our 2005 fiscal year, we estimated that 7,982 Notices would be filed annually, assuming that all issuers and other soliciting persons elected to follow the proposed notice and access model.[154] We further estimated that the total annual reporting burden would be approximately 8,980 hours.[155] Using the revised $400 average cost for retaining outside counsel, we are adjusting our annual cost estimate to approximately $1,197,300,[156] which reflects the outside counsel cost.

Although the notice and access model is an alternative to the existing model for the distribution of proxy materials to shareholders, and reliance upon it will be optional, we based our reporting burden and cost estimates on the assumption that all issuers or other soliciting persons in fiscal year 2005 would have relied on the notice and access model even though we realized that this would result in an overestimation of hour and cost burdens. The new alternative is voluntary, so the percentage of issuers and soliciting persons that will choose to rely on the new model is uncertain.

In response to commenters' remarks, we revised the proposal to require issuers to permit shareholders to make permanent elections to receive proxy materials in paper or by e-mail. An issuer must maintain records as to which of its shareholders have made such an election. Many issuers already maintain similar records to keep track of their shareholders who have affirmatively consented to electronic delivery consistent with past Commission guidance,[157] as well as their shareholders who have consented to householding of proxy materials pursuant to Rule 14a–3(e).[158] For purposes of the PRA, we estimate that a typical issuer will spend an additional five hours per year, or a total of 39,910 hours for all issuers subject to the proxy rules, to maintain these records.[159] Because this is an internal recordkeeping requirement, we do not expect a cost for hiring outside counsel.

The final rules also require an intermediary to prepare its own Notice. This Notice would be substantially the same as an issuer's Notice, but will be modified by the intermediaries to provide information that is relevant to beneficial owners rather than registered holders. According to ADP, it processes more than 95% of proxy materials that are sent to beneficial owners on behalf of intermediaries, reducing the need to create multiple intermediary Notices. In addition, the issuer or other soliciting person will provide the majority of information required in the intermediary's Notice. Therefore, we estimate that the burden to prepare an intermediary's Notice will be approximately one hour, or a total annual burden of 7,982 hours for all proxy solicitations.[160]

Intermediaries must also maintain records to keep track of which beneficial owners have made a permanent election to receive proxy materials in paper or by e-mail. Like issuers, intermediaries already maintain records of shareholders' affirmative consents to electronic delivery and householding of proxy materials. In addition, intermediaries maintain records as to whether their beneficial owner customers have objected, or not objected, to disclosure of their identities to the issuer. Like issuers, we believe this will result in an annual burden of 39,910 hours for intermediaries.

We did not receive any comments on the percentage of issuers and persons likely to rely on the notice and access model, nor did we receive any comments on our burden and cost estimates associated with preparing the Notice. However, several corporate commenters indicated that some issuers might be reluctant to rely on the notice and access model due to a concern that the costs of fulfillment of requests for paper copies under the model might offset some of the potential savings that they could realize from the model. We have revised the proposed model to address some of these concerns about fulfillment of requests for paper copies, but it is still difficult to predict the number of issuers and soliciting persons that will rely on the model. Therefore, we are not revising the original estimates that assume that all issuers and soliciting persons will rely on the notice and access model. As a result, these burden estimates likely are overstated. We will adjust them after we have actual experience with the notice and access model. We request comment on all of our hourly and cost burden estimates.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy

[153] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $100. At the proposing stage, we used an estimated hourly rate of $300.00 to determine the estimated cost to public companies of executive compensation and related disclosure prepared or reviewed by outside counsel. We recently have increased this hourly rate estimate to $400.00 per hour after consulting with several private law firms. The cost estimates in this release are based on the $400.00 hourly rate. We request comment on this estimated hourly rate.

[154] 7,301 notices for 14A filers + 681 notices for 14C filers = 7,982 total notices.

[155] 7,982 notices × 1.5 hours per notice × .75 = 8,980 hours.

[156] 7,982 notices × $400/hour × 1.5 hours/notice × .25 = $1,197,300.

[157] See the 1995 Interpretive Release.

[158] 17 CFR 240.14a–3(e).

[159] 7,982 filings with an estimated one filing per issuer or soliciting person × 5 hours = 39,910 hours.

[160] 7,982 notices × 1 hour per notice = 7,982 hours. We do not include a cost to intermediaries for hiring outside counsel because we expect that the substantive contents of an intermediary's Notice would be provided by the issuer or other soliciting person. The estimates assume that ADP will continue to process over 95% of the proxy solicitations on behalf of intermediaries, thereby eliminating the need for each intermediary to prepare a separate Notice.

of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–10–05. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–10–05, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

The amendments to the proxy rules enable issuers to take advantage of technological advances that have occurred in recent years to more efficiently furnish proxy materials to shareholders. We expect that these amendments will lead to significant cost reduction for proxy solicitations. The costs of solicitations ultimately are borne by shareholders. We are sensitive to the costs and benefits that result from our rules. In this section, we examine those costs and benefits.

Issuers and other persons soliciting proxies must comply with the rule amendments only if they elect to furnish proxy materials pursuant to the notice and access model. No issuer or person conducting a proxy solicitation will be required to follow the notice and access model. We expect that an issuer or other soliciting person will follow the model only if it believes that it will experience cost savings as a result. We expect that having a choice among alternative models for furnishing proxy materials will limit the costs of the amendments by enabling issuers and other soliciting persons to choose one that is most efficient and cost effective under the issuer's or other soliciting person's particular circumstances.

B. Summary of Amendments

The amendments provide an alternative notice and access model that permits an issuer to furnish its proxy materials to shareholders by posting them on a publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access them. Under this alternative model, shareholders may request paper or e-mail copies of the proxy materials at no charge from the issuer.

Under the amendments, an issuer can require intermediaries to follow similar procedures when forwarding the issuer's proxy materials to beneficial owners. In addition, shareholders and other persons conducting their own proxy solicitations may follow the alternative model, under the same general requirements that apply to issuers. However, such persons will be able to limit their solicitations to shareholders who have not requested paper copies of the proxy materials from an issuer in connection with the issuer's solicitation.

C. Benefits

The benefits to investors of the amendments include the following: (1) More rapid dissemination of proxy information to shareholders using the Internet; and (2) reduced printing and mailing costs for issuers, as well as other soliciting persons engaging in proxy contests. We expect that the reductions in printing and mailing costs and the potential decrease in the costs of proxy contests to be the most significant sources of economic benefit to investors of the amendments.

In terms of paper processing alone, the benefits of the rule amendments are limited by the volume of paper processing that would occur otherwise. As we noted in the proposing release, Automatic Data Processing, Inc. (ADP) handles the vast majority of proxy mailings to beneficial owners.[161] ADP publishes statistics that provide useful background for evaluating the likely consequences of the rule amendments. ADP estimates that, during the 2006 proxy season,[162] over 69.7 million proxy material mailings were eliminated through a variety of means, including householding and existing electronic delivery methods. During that season, ADP mailed 85.3 million paper proxy items to beneficial owners. ADP estimates that the average cost of printing and mailing a paper copy of a set of proxy materials during the 2006 proxy season was $5.64. We estimate that issuers and other soliciting persons spent, in the aggregate, $481.2 million in postage and printing fees alone to distribute paper proxy materials to beneficial owners.[163] Approximately 50% of all proxy pieces mailed by ADP in 2005 were mailed during the proxy season.[164] Therefore, we estimate that issuers and other persons soliciting proxies from beneficial owners spent approximately $962.4 million in 2006 in printing and mailing costs.[165]

Based on the assumption that 19% of shareholders will choose to have paper copies sent to them when an issuer relies on the notice and access model, we estimate that the amendments could produce annual paper-related savings ranging from $48.3 million (if issuers who are responsible for 10% of all proxy mailings choose to rely on the notice and access model) to $241.4 million (if issuers who are responsible for 50% of all proxy mailings choose to rely on the notice and access model).[166] This estimate excludes the effect of the provision of the amendments that will allow shareholders to make a permanent request for paper copies. That provision will enable issuers and other soliciting persons to take advantage of bulk printing and mailing rates for those requesting shareholders, and therefore should reduce the on-demand costs reflected in these calculations.[167]

We estimate that approximately 19% of shareholders will request paper copies. Commenters provided alternate

[161] We expect savings per mailing to record holders to roughly correspond to savings per mailing to beneficial owners.

[162] According to ADP data, the 2006 proxy season extended from February 15, 2006 to May 1, 2006.

[163] 85.3 million mailings × $5.64/mailing = $481.2 million.

[164] According to ADP, in 2005, 90,013,175 of 179,833,774, or 50%, of proxy pieces were mailed during the 2005 proxy season.

[165] $481.2 million / 50% = $962.4 million.

[166] This range of potential cost savings depends on data on proxy material production, home printing costs, and first-class postage rates provided by Lexecon and ADP, and supplemented with modest 2006 USPS postage rate discounts. The fixed costs of notice and proxy material production are estimated to be $2.36 per shareholder. The variable costs of fulfilling a paper requests, including handling, paper, printing and postage, are estimated to be $6.11 per copy requested. Assumptions about percentages of shareholders requesting paper copies are derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Our estimate of the total number of shareholders is based on data provided by ADP and SIA. According to SIA's comment letter, 78.49% of shareholders held their shares in street name. We estimate that the total number of proxy pieces mailed equals the number of pieces mailed to beneficial shareholders by ADP in 2005 divided by 78.49%, which equals 179,833,774 / 78.49%, or 229,116,797.

[167] ADP commissioned a study by Lexecon to provide estimates for the total net cost/savings of the amendments to issuers. Lexecon's study relied on 2005 postage rates with no first-class mail discounts and a higher share of color printing at home than we assume above. It estimated that if all issuers adopt the notice and access model, if 9% of shareholders choose to print the materials at home, and 19% choose to have paper copies sent to them, then the amendments would produce a net savings of $205 million for issuers in the aggregate. However, if 20% of shareholders chose to print and 39% chose to request paper copies, the amendments would produce a net cost of $181 million. See Lexecon comment letter for more details.

estimates. For example, Computershare, a large transfer agent, estimated that less than 10% of shareholders would request paper copies.[168] According to a survey conducted by Forrester Research for ADP, 12% of shareholders report that they would always take extra steps to get their proxy materials, and as many as 68% of shareholders report that they would take extra steps to get their proxy materials in paper at least some of the time. The same survey also finds that 82% of shareholders report that they look at their proxy materials at least some of the time. These survey results suggest that shareholders may review proxy materials even if they do not vote. During the 2005 proxy season, only 44% of accounts were voted by beneficial owners. Put differently, 56%, or 84.8 million accounts, did not return requests for voting instructions. Our estimate that 19% of shareholders will request paper copies reflects the diverse estimates suggested by the available data.

Although we expect the savings to be significant, the actual paper-related benefits will be influenced by several factors that we estimate will become less important over time. First, some issuers and other soliciting persons will likely not elect to follow the alternative model. We estimate that issuers who are responsible for between 10% and 50% of all current proxy mailings will adopt the notice and access model during the first year of implementation of the amendments. Several commenters noted that some issuers may not be willing to try the model the first year, but rather will opt to wait and monitor the experience of other issuers that do try the model. Second, to the extent that some shareholders request paper copies of the proxy materials, the benefits of the amendments in terms of savings in printing and mailing costs will be reduced. Issuers are concerned that the cost per paper copy would be significantly greater if they have to mail copies of paper proxy materials to shareholders on an on-demand basis, rather than mailing the paper copies in bulk. Thus, if a significant number of shareholders request paper, the savings will be substantially reduced. Third, after adopting the notice and access model, issuers may face a high degree of uncertainty about the number of requests that they may get for paper proxy materials and may maintain unnecessarily large inventories of paper copies as a precaution. As issuers gain familiarity with the continued use of paper materials and as shareholders become more comfortable with receiving disclosures via the Internet, the number of paper copies are likely to decline, as will issuers' tendency to print many more copies than ultimately are requested. This will lead to growth in paper-related savings from the rule amendments over time.

Additional benefits will accrue from reductions in the costs of proxy solicitations by persons other than the issuer. Under the amendments, persons other than the issuer also can rely on the notice and access model, but will be able to limit the scope of their proxy solicitations to shareholders who have not requested paper copies of the proxy materials. We expect that the flexibility afforded to persons other than the issuer under the amendments will reduce the cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a source of discipline in the corporate governance process.

The effect of the amendments of lessening the costs associated with a proxy contest will be limited by the persistence of other costs, even under the notice and access model. One commenter noted that a large percentage of the costs of effecting a proxy contest go to legal, document preparation, and solicitation fees, while a much smaller percentage of the costs is associated with printing and distribution of materials.[169] However, other commenters suggested that the paper-related cost savings that can be realized from the rule amendments are substantial enough to change the way many contests are conducted.[170]

Finally, some benefits from the amendments may arise from a reduction in what may be regarded as the environmental costs of the proxy solicitation process.[171] Specifically, proxy solicitation involves the use of a significant amount of paper and printing ink. Paper production and distribution can adversely affect the environment, due to the use of trees, fossil fuels, chemicals such as bleaching agents, printing ink (which contains toxic metals), and cleanup washes. To the extent that paper producers internalize these costs and the costs are reflected in the price of paper and other materials consumed during the proxy solicitation process, our dollar estimates of the paper-related benefits reflect the elimination of these adverse environmental consequences under the amendments.

D. Costs

An issuer's decision to use the notice and access model will introduce several new costs into the process of proxy distribution, including the following: (1) The cost of preparing, producing, and sending the Notice to shareholders; (2) the cost of processing shareholders' requests for copies of the proxy materials and maintaining their permanent election preferences; and (3) the cost to shareholders of printing proxy materials at home that would otherwise be printed by issuers.

The paper-related savings to issuers and other soliciting persons discussed under the benefits section above are adjusted for the cost of printing and sending Notices. If Notices are sent by mail, then the mailing costs may vary widely among parties. Postage rates likely would vary from $0.14 to $0.39 per Notice mailed, depending on numerous factors. In our estimates of the paper-related benefits above, we assume that each Notice costs a total of $0.42 to print and mail. Based on data from ADP and SIA, we estimate that issuers and other soliciting persons process a total of 229,116,797 accounts per year.[172] The alternative model also requires minimal added disclosures in the form of a Notice to shareholders, informing them that the proxy materials are available at a specified Internet Web site. For purposes of the PRA, we have presented the extremely conservative estimate that the preparation and filing costs of the amendments, assuming that all issuers and other soliciting persons elect to follow the procedures, will be approximately $2,020,475.[173] Under the alternate scenario presented above, these costs could range between $202,048 if 10% of issuers adopt the model and $1,010,238 if 50% of issuers adopt. The amendments also require issuers and intermediaries to maintain records of shareholders who have requested paper and e-mail copies for future proxy solicitations. We estimate that this cost to issuers and intermediaries will be approximately

[168] See letter from Computershare.

[169] See letter from ADP.

[170] See letters from CALSTRS, Computershare, ISS, and Swingvote.

[171] See letter from American Forests.

[172] See *www.ics.adp.com/release11/public_site/about/stats.html* stating that ADP handled 179,833,774 in fiscal year 2005 and letter from SIA stating that beneficial accounts represent 78.49% of total accounts.

[173] For PRA purposes, we estimate that issuers would spend a total of $897,975 on outside professionals to prepare this disclosure. We also estimate that issuers would spend a total of 8,980 hours of issuer personnel time preparing this disclosure. We estimate the average hourly cost of issuer personnel time to be $125, resulting in a total cost of $1,122,500 for issuer personnel time. This results in a total cost of $2,020,475 for all issuers. We expect that costs for posting the materials on a Web site will be minimal and are included in this calculation.

$9,977,500 if all issuers adopt the notice and access model,[174] $997,500 if 10% of issuers adopt the model, and $4,988,750 if 50% of issuers adopt the model.

Issuers who adopt the notice and access model and their intermediaries will incur additional processing costs. The amendments will require an intermediary such as a bank, broker-dealer, or other association to follow the notice and access model if an issuer so requests. An intermediary that follows the notice and access model will be required to prepare its own Notice to beneficial owners, along with instructions on when and how to request paper copies and the Web site where the beneficial owner can access his or her request for voting instructions. Since issuers reimburse intermediaries for their reasonable expenses of forwarding proxy materials and intermediaries and their agents already have systems to prepare and deliver requests for voting instructions, we do not expect the intermediaries' role in sending their Notices to beneficial owners to significantly affect the costs associated with the rule.

Under the notice and access model, a beneficial owner must request a copy of proxy materials from its intermediary rather than from the issuer. The costs of collecting and processing requests from beneficial owners may be significant, particularly if the intermediary receives the requests of beneficial owners associated with many different issuers that specify different methods of furnishing the proxy. We expect that these processing costs will be highest in the first year after adoption but will subsequently decline as intermediaries develop the necessary systems and procedures and as beneficial owners increasingly become comfortable with accessing proxy materials online. In addition, the final rules permit a beneficial owner to specify its preference on an account-wide basis, which should reduce the cost of processing requests for copies. These costs are ultimately paid by the issuer and therefore would be included in an issuer's assessment of whether to adopt the alternative model.

Shareholders obtaining proxy materials online would incur any necessary costs associated with gaining access to the Internet. In addition, some shareholders may choose to print out the posted materials, which will entail paper and printing costs. We estimate that approximately 10% of all shareholders will print out the posted materials at home at an estimated cost of $7.05 per proxy package. Based on these assumptions, the amendments are estimated to produce annual home printing costs ranging from $16 million (if issuers who are responsible for 10% of all current proxy mailings choose to rely on the notice and access model) to $80 million (if issuers who are responsible for 50% of all current proxy mailings choose to rely on the notice and access model).[175] Investors have the option to incur no additional cost by either accessing the proxy materials online or requesting paper copies of the materials from the issuer.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[176] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[177] and Section 2(c) of the Investment Company Act of 1940[178] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We have also discussed other impacts of the amendments in our Cost-Benefit, Paperwork Reduction Act and Final Regulatory Flexibility Act Analyses.

The amendments to the proxy rules are intended to improve efficiency by providing an alternative for issuers and other soliciting persons that could reduce the cost of soliciting proxies and sending information statements regarding shareholder meetings. Currently, many issuers must devote a significant amount of time and resources to proxy mailings. Similarly, undertaking a proxy contest is often a very costly endeavor. We expect that the amendments will reduce the time and resources related to such distributions. These costs include reimbursing intermediaries for their part in the process.

As noted elsewhere in this release, commenters expressed concern that the amendments might reduce shareholder participation in the proxy voting process, making issuers more dependent on broker discretionary voting. Such a result would affect the efficiency of the current proxy voting process. We have made revisions to the amendments to minimize such effect, by making it easier for shareholders to continue to receive paper copies of the proxy materials. Similarly, there was concern that the amendments would increase the risk of shareholders conducting frivolous proxy contests. We have also revised the final rules to minimize this possibility, by eliminating the proposed conditional solicitation.[179]

Some commenters were concerned that the added procedures would complicate the proxy distribution process, reducing the efficiency of the process. The final rules are voluntary. No issuer or other soliciting person is required to rely on the notice and access model. Those that choose to rely on the model presumably have determined that the additional procedures that they must follow would reduce their cost of soliciting proxies, thereby increasing the efficiency of the process.

We considered the effects that the amendments would have on capital formation. The final rules do not directly affect the ability of issuers to raise capital. However, they are intended to reduce the cost of soliciting proxies. In addition, they facilitate proxy disclosure via the Internet, which may improve the manner in which investors receive those disclosures, thereby improving shareholder relations.

We considered the possible effects of the amendments on competition. As noted elsewhere in this release, companies in, and related to, the financial printing industry were concerned about the negative effects that the rules may have on that industry. Conversely, these rules may create alternative industries that promote more user-friendly, computer-based systems

[174] For PRA purposes, we estimate that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimate the average hourly cost of issuer and intermediary personnel time to be $125, resulting in a total cost of $9,977,500 for issuer and intermediary personnel time.

[175] This range of potential home printing costs depends on data provided by Lexecon and ADP. See letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing cost, we assume that 50% of annual report pages are printed in color and 100% of proxy statement pages are printed in black and white. The estimated percentage of shareholders printing at home is derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Total number of shareholders estimated as above based on data provided by ADP and SIA. See letters from ADP and SIA.

[176] 15 U.S.C. 78w(a)(2).

[177] 15 U.S.C. 78c(f).

[178] 15 U.S.C. 80a–2(c).

[179] See Section III.C.1 of Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

for interaction with shareholders, thus creating new jobs and industries in this field.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to amendments to the proxy rules under the Exchange Act that will provide an alternative model for issuers and other persons soliciting proxies to satisfy certain of their obligations under the Commission's proxy rules. An Initial Regulatory Flexibility Analysis (IRFA) was prepared in accordance with the Regulatory Flexibility Act in conjunction with the proposing release. The proposing release included, and solicited comment on, the IRFA.

A. Need for the Amendments

On December 8, 2005, we proposed amendments to the rules regarding provision of proxy materials to shareholders.[180] We are adopting those amendments, substantially as proposed, but with a few modifications in response to public comment. Specifically, the amendments create an alternative notice and access model by which issuers and other soliciting persons can electronically furnish their proxy materials to shareholders. The amendments are intended to put into place processes that will provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. Issuers that rely on the amendments may be able to significantly lower the costs of their proxy solicitations that ultimately are borne by shareholders. The fact that the amendments also apply to a soliciting person other than the issuer might help to reduce the costs of engaging in a proxy contest.

The amendments also have the potential to improve the ability of shareholders to participate meaningfully in the proxy process by reducing the cost of undertaking a proxy contest and may increase management's accountability and responsiveness to shareholders due to heightened concern about the possibility of a proxy contest. This, in turn, may enhance the value of shareholders' investments.

B. Significant Issues Raised by Public Comment

In the proposing release, we requested comment on any aspect of the Initial Regulatory Flexibility Act Analysis, including the number of small entities that would be affected by the proposals, and both the qualitative and quantitative nature of the impact. We did not receive comment on the number of small entities that would be affected by the proposals. Also, no commenters noted any difference in the potential effect of the amendments on small entities as opposed to other entities.

One commenter remarked that smaller companies depend more heavily on broker discretionary voting than larger companies in order to meet state law quorum requirements.[181] Although the new rules do not affect the NYSE's broker discretionary voting rule, that commenter noted that if the final rules reduce shareholder voting, such smaller companies would become even more dependent on broker discretionary voting. As noted elsewhere in this release, we have made revisions to the amendments to minimize such effect, by making it easier for shareholders to continue to receive paper copies of the proxy materials.

C. Small Entities Subject to the Amendments

Exchange Act Rule 0–;10(a) [182] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 public companies, other than investment companies, that may be considered small entities.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[183] Approximately 157 registered investment companies meet this definition. Moreover, approximately 53 business development companies may be considered small entities.

Paragraph (c)(1) of Rule 0–10 under the Exchange Act [184] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2005, the Commission estimates that there were approximately 910 broker-dealers that qualified as small entities as defined above.[185] Small Business Administration regulations define ''small entities'' to include banks and savings associations with total assets of $165 million or less.[186] The Commission estimates that the rules will apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of $165 million or less.

No issuer is required to follow the notice and access model. However, we expect that many issuers will choose to follow the alternative model because of the substantial cost savings that they may realize. These issuers likely will include many small entities. Broker-dealer and bank intermediaries are required to comply with the notice and access model if an issuer or other soliciting person requests such intermediaries to follow the alternative model.

D. Reporting, Recordkeeping and Other Compliance Requirements

If an issuer chooses to follow the model, it will be required to prepare, file, and furnish a Notice to shareholders. Similarly, upon request from an issuer or other soliciting person, a broker-dealer or bank intermediary will be required to prepare and furnish its own Notice to beneficial owners. These Notices must include factual information that is readily available to the issuer and intermediary. An issuer relying on the notice and access model also will be required to provide copies of the proxy materials to requesting shareholders and to maintain a Web site on which to post the proxy materials. Intermediaries will be required to forward copies of the proxy materials to requesting beneficial owners and to maintain a Web site on which to post its request for voting instructions. Those Web sites must be maintained in a manner to ensure that the anonymity of persons accessing the Web sites is preserved. Finally, issuers and intermediaries must maintain records regarding which shareholders have indicated a preference to receive paper

[180] Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

[181] See letter from ABC.

[182] 17 CFR 240.0–10(a).

[183] See Rule 0–10 under the Investment Company Act of 1940 [17 CFR 270.0–10].

[184] 17 CFR 240.0–10(c)(1).

[185] These numbers are based on a review by the Commission's Office of Economic Analysis of 2005 Financial and Operational Combined Uniform Single (FOCUS) Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent in their FOCUS Report filings.

[186] 13 CFR 121.201.

or e-mail copies of the proxy materials in the future.

E. Agency Action To Minimize Effect on Small Entities

Compliance with the alternative notice and access model is voluntary for issuers. An issuer that is a small entity, like other types of entities subject to the proxy rules, need not elect to follow the alternative model. This flexibility to comply with traditional methods of distributing proxy materials to shareholders or to comply with the notice and access model will allow a small entity to choose the compliance means that will be most cost effective for its particular situation. It is likely that only the issuers that believe they will realize cost savings or other benefits as a result of following the notice and access model will choose to do so.

Broker-dealer and bank intermediaries that are small entities must comply with the requirements of the voluntary model upon request from an issuer or other soliciting person. However, an intermediary is not required to forward proxy materials to beneficial owners unless the issuer or other soliciting person provides assurance of reimbursement of the intermediary's reasonable expenses incurred in connection with forwarding those materials. Therefore, any costs imposed on intermediaries by the rules will be borne by the issuer or other soliciting person, and ultimately shareholders. Exempting broker-dealers and banks that are small entities would lead to inconsistent means by which beneficial owners receive their proxy materials, which we believe would not be appropriate.

We considered alternatives, such as permitting an intermediary to merely forward an issuer's Notice rather than preparing its own Notice and permitting beneficial owners to request copies directly from the issuer. However, we believe that those alternatives create a high likelihood of confusion with respect to whether a beneficial owner would be entitled to execute a proxy card rather than provide voting instructions to his or her intermediary. To prevent such confusion, we have decided that such alternatives would not be appropriate.

IX. Statutory Basis and Text of Amendments

We are adopting the amendments pursuant to Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–2 by:

■ a. Removing the period and adding a semicolon at the end of paragraph (b)(3)(ii); and

■ b. Revising paragraph (b)(3)(iv).

The revision reads as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(3) * * *

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 240.14a–12(c); and

* * * * *

■ 3. Amend § 240.14a–3 by:

■ a. Revising paragraphs (a), (e)(1)(i), the introductory text of paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B)(*2*), paragraphs (e)(1)(ii)(B)(*2*)(*ii*), (e)(1)(ii)(B)(*2*)(*iii*), (e)(1)(ii)(B)(*3*), (e)(1)(iii), and (e)(2); and

■ b. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (b)(13).

The revisions read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with:

(1) A publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101);

(2) A publicly-filed preliminary or definitive proxy statement, in the form and manner described in § 240.14a–16, containing the information specified in Schedule 14A (§ 240.14a–101); or

(3) A preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter) and containing the information specified in such Form.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as described in § 240.14a–16, to all security holders of record who share an address if:

(A) The registrant delivers one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the shared address;

(B) The registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the security holders as a group (for example, ''ABC Fund [or Corporation] Security Holders,'' ''Jane Doe and Household,'' ''The Smith Family''), to each of the security holders individually (for example, ''John Doe and Richard Jones'') or to the security holders in a form to which each of the security holders has consented in writing;

Note to paragraph (e)(1)(i)(B): Unless the registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to the security holders as a group or to each of the security holders individually, it must obtain, from each security holder to be included in the household group, a separate affirmative written consent to the specific form of address the registrant will use.

(C) The security holders consent, in accordance with paragraph (e)(1)(ii) of this section, to delivery of one annual report to security holders or proxy statement, as applicable;

(D) With respect to delivery of the proxy statement or Notice of Internet Availability of Proxy Materials, the registrant delivers, together with or subsequent to delivery of the proxy statement, a separate proxy card for each security holder at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report to security holders, proxy

statement or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the document was delivered.

(ii) *Consent.* (A) *Affirmative written consent.* Each security holder must affirmatively consent, in writing, to delivery of one annual report to security holders or proxy statement, as applicable. A security holder's affirmative written consent will be considered valid only if the security holder has been informed of:

* * * * *

(B) * * *

(*2*) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to security holders, proxy statements or Notices of Internet Availability of Proxy Materials to that security holder. The notice must:

* * * * *

(*ii*) State that only one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, will be delivered to the shared address unless the registrant receives contrary instructions;

(*iii*) Include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that the security holder wishes to receive a separate annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials;

* * * * *

(*3*) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive an individual copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, within 60 days after the registrant sent the notice required by paragraph (e)(1)(ii)(B)(*2*) of this section; and

* * * * *

(iii) *Revocation of consent.* If a security holder, orally or in writing, revokes consent to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder's consent.

* * * * *

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a security holder if:

(i) An annual report to security holders and a proxy statement, or a Notice of Internet Availability of Proxy Materials, for two consecutive annual meetings; or

(ii) All, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period, have been mailed to such security holder's address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant's obligation to deliver an annual report to security holders, a proxy statement or a Notice of Internet Availability of Proxy Materials under this section is reinstated.

* * * * *

§ 240.14a–4 [Amended]

■ 4. Amend § 240.14a–4 by:

■ a. Removing the authority citation following the section;

■ b. Revising the word ''mailed'' to read ''sent'' in the first sentence of paragraph (c)(1); and

■ c. Revising the word ''mails'' to read ''sends'' in the last sentence of paragraph (c)(1).

■ 5. Amend § 240.14a–7 by:

■ a. Revising paragraphs (a)(2)(i) and (a)(2)(ii);

■ b. Adding paragraph (a)(2)(iii); and

■ c. In the ''Notes to § 240.14a–7'', revising the numerical designation ''1.'' to read ''Note 1 to § 240.14a–7'', revising the numerical designation ''2.'' to read ''Note 2 to § 240.14a–7'' and adding ''Note 3 to § 240.14a–7''.

The revisions and additions read as follows:

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

* * * * *

(a) * * *

(2) * * *

(i) Send copies of any proxy statement, form of proxy, or other soliciting material, including a Notice of Internet Availability of Proxy Materials (as described in § 240.14a–16), furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be sent to the banks, brokers, and similar entities for distribution to all beneficial owners designated by the security holder. The security holder may designate only record holders and/or beneficial owners who have not requested paper and/or e-mail copies of the proxy statement. If the registrant has received affirmative written or implied consent to deliver a single proxy statement to security holders at a shared address in accordance with the procedures in § 240.14a–3(e)(1), a single copy of the proxy statement or Notice of Internet Availability of Proxy Materials furnished by the security holder shall be sent to that address, provided that if multiple copies of the Notice of Internet Availability of Proxy Materials are furnished by the security holder for that address, the registrant shall deliver those copies in a single envelope to that address. The registrant shall send the security holder material with reasonable promptness after tender of the material to be sent, envelopes or other containers therefore, postage or payment for postage and other reasonable expenses of effecting such distribution. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request:

(A) A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems;

(B) The most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a–13(b), in the possession, or which subsequently comes into the possession, of the registrant;

(C) The names of security holders at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received written or implied consent in accordance with § 240.14a–3(e)(1); and

(D) If the registrant has relied on § 240.14a–16, the names of security holders who have requested paper copies of the proxy materials for all meetings and the names of security holders who, as of the date that the registrant receives the request, have requested paper copies of the proxy materials only for the meeting to which the solicitation relates.

(iii) All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals; provided, however, the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

* * * * *

Notes to § 240.14a–7.

* * * * *

Note 3 to § 240.14a–7. If the registrant is sending the requesting security holder's materials under § 240.14a–7 and receives a request from the security holder to furnish the materials in the form and manner described in § 240.14a–16, the registrant must accommodate that request.

■ 6. Amend § 240.14a–8 by revising the word ''mail'' to read ''send'' in the last sentence of paragraph (e)(2) and in paragraph (e)(3) and the word ''mails'' to read ''sends'' in the introductory text of paragraph (m)(3).

■ 7. Amend § 240.14a–12 by revising the term ''annual report'' to read ''annual report to security holders'' in the heading of paragraph (c)(1) and the first sentence of paragraph (c)(1).

■ 8. Amend § 240.14a–13 by revising the word ''mailing'' to read ''sending'' in paragraph (a)(5) and the word ''mail'' to read ''send'' in Note 2 following paragraph (a) and in paragraph (c), each time it appears.

■ 9. Add § 240.14a–16 to read as follows:

§ 240.14a–16 Internet availability of proxy materials.

(a)(1) A registrant may furnish a proxy statement pursuant to § 240.14a–3(a), or an annual report to security holders pursuant to § 240.14a–3(b), to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or if no meeting is to be held, 40 calendar days or more prior to the date the votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section.

(2) If the registrant chooses to provide the proxy statement or annual report to security holders to beneficial owners pursuant to this section, it must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare, print and send a Notice of Internet Availability of Proxy Materials to beneficial owners at least 40 calendar days before the meeting date.

(b)(1) All materials identified in the Notice of Internet Availability of Proxy Materials must be publicly accessible, free of charge, at the Web site address specified in the notice on or before the time that the notice is sent to the security holder and such materials must remain available on that Web site through the conclusion of the meeting of security holders.

(2) All additional soliciting materials sent to security holders or made public after the Notice of Internet Availability of Proxy Materials has been sent must be made publicly accessible at the specified Web site address no later than the day on which such materials are first sent to security holders or made public.

(3) The Web site address relied upon for compliance under this section may not be the address of the Commission's electronic filing system.

(4) The registrant must provide security holders with a means to execute a proxy as of the time the Notice of Internet Availability of Proxy Materials is first sent to security holders.

(c) The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.

(d) The Notice of Internet Availability of Proxy Materials must contain the following:

(1) A prominent legend in bold-face type that states:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date].

1. This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

2. The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].

3. If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.'';

(2) The date, time, and location of the meeting, or if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;

(3) A clear and impartial identification of each separate matter intended to be acted on and the soliciting person's recommendations regarding those matters, but no supporting statements;

(4) A list of the materials being made available at the specified Web site;

(5) A toll-free telephone number, an e-mail address, and an Internet Web site where the security holder can request a copy of the proxy statement, annual report to security holders, and form of proxy, relating to all of the registrant's future security holder meetings and for the particular meeting to which the proxy materials being furnished relate;

(6) Any control/identification numbers that the security holder needs to access his or her form of proxy;

(7) Instructions on how to access the form of proxy, provided that such instructions do not enable a security holder to execute a proxy without having access to the proxy statement and, if required by § 240.14a–3(b), the annual report to security holders; and

(8) Information on how to obtain directions to be able to attend the meeting and vote in person.

(e)(1) The Notice of Internet Availability of Proxy Materials may not be incorporated into, or combined with, another document, except that it may be incorporated into, or combined with, a notice of security holder meeting required under state law, unless state law prohibits such incorporation or combination.

(2) The Notice of Internet Availability of Proxy Materials may contain only the information required by paragraph (d) of this section and any additional information required to be included in a notice of security holders meeting under state law; provided that:

(i) The registrant must revise the information on the Notice of Internet Availability of Proxy Materials, including any title to the document, to reflect the fact that:

(A) The registrant is conducting a consent solicitation rather than a proxy solicitation; or

(B) The registrant is not soliciting proxy or consent authority, but is furnishing an information statement pursuant to § 240.14c–2; and

(ii) The registrant may include a statement on the Notice to educate security holders that no personal information other than the identification or control number is necessary to execute a proxy.

(f)(1) Except as provided in paragraph (h) of this section, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of security holder communications and may not accompany any other

document or materials, including the form of proxy.

(2) Notwithstanding paragraph (f)(1) of this section, the registrant may accompany the Notice of Internet Availability of Proxy Materials with:

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials; and

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials.

(g) *Plain English.*

(1) To enhance the readability of the Notice of Internet Availability of Proxy Materials, the registrant must use plain English principles in the organization, language, and design of the notice.

(2) The registrant must draft the language in the Notice of Internet Availability of Proxy Materials so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(3) In designing the Notice of Internet Availability of Proxy Materials, the registrant may include pictures, logos, or similar design elements so long as the design is not misleading and the required information is clear.

(h) The registrant may, at its discretion, choose to furnish some proxy materials pursuant to § 240.14a–3(a)(1) and other proxy materials pursuant to this section, provided that the registrant may not send a form of proxy to security holders until 10 calendar days or more after the date it sent the Notice of Internet Availability of Proxy Materials to security holders, unless the form of proxy is accompanied or has been preceded by a copy of the proxy statement and any annual report to security holders that is required by § 240.14a–3(b) through the same delivery medium. If the registrant sends a form of proxy after the expiration of such 10-day period and the form of proxy is not accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by § 240.14a–3(b), then the registrant shall accompany the form of proxy with a Notice of Internet Availability of Proxy Materials.

(i) The registrant must file a form of the Notice of Internet Availability of Proxy Materials with the Commission pursuant to § 240.14a–6(b) no later than the date that the registrant first sends the notice to security holders.

(j) *Obligation to provide copies.*

(1) The registrant must send, at no cost to the record holder or respondent bank and by U.S. first class mail or other reasonably prompt means, a paper copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for a paper copy.

(2) The registrant must send, at no cost to the record holder or respondent bank and via e-mail, an electronic copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for an electronic copy via e-mail.

(3) The registrant is required to provide copies of the proxy materials pursuant to paragraphs (j)(1) and (j)(2) of this section for one year after the conclusion of the meeting or corporate action to which the proxy materials relate.

(4) The registrant must maintain records of security holder requests to receive materials in paper or via e-mail for future solicitations and must continue to provide copies of the materials to a security holder who has made such a request until the security holder revokes such request.

(k) *Security holder information.*

(1) A registrant or its agent shall maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing such Web site.

(2) The registrant and its agents shall not use any e-mail address obtained from a security holder solely for the purpose of requesting a copy of proxy materials pursuant to paragraph (j) of this section for any purpose other than to send a copy of those materials to that security holder. The registrant shall not disclose such information to any person other than an employee or agent to the extent necessary to send a copy of the proxy materials pursuant to paragraph (j) of this section.

(l) A person other than the registrant may solicit proxies pursuant to the conditions imposed on registrants by this section, provided that:

(1) A soliciting person other than the registrant is required to provide copies of its proxy materials only to security holders to whom it has sent a Notice of Internet Availability of Proxy Materials; and

(2) A soliciting person other than the registrant must send its Notice of Internet Availability of Proxy Materials by the later of:

(i) 40 Calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(ii) 10 calendar days after the date that the registrant first send its proxy statement or Notice of Internet Availability of Proxy Materials to security holders.

(3) *Content of the soliciting person's Notice of Internet Availability of Proxy Materials.*

(i) If, at the time a soliciting person other than the registrant sends its Notice of Internet Availability of Proxy Materials, the soliciting person is not aware of all matters on the registrant's agenda for the meeting of security holders, the soliciting person's Notice on Internet Availability of Proxy Materials must provide a clear and impartial identification of each separate matter on the agenda to the extent known by the soliciting person at that time. The soliciting person's notice also must include a clear statement indicating that there may be additional agenda items of which the soliciting person is not aware and that the security holder cannot direct a vote for those items on the soliciting person's proxy card provided at that time.

(ii) If a soliciting person other than the registrant sends a form of proxy not containing all matters intended to be acted upon, the Notice of Internet Availability of Proxy Materials must clearly state whether execution of the form of proxy will invalidate a security holder's prior vote on matters not presented on the form of proxy.

(m) This section shall not apply to a proxy solicitation in connection with a business combination transaction, as defined in § 230.165 of this chapter.

(n) This section provides a non-exclusive alternative by which an issuer or other person may furnish a proxy statement pursuant to § 240.14a–3(a) or an annual report to security holders pursuant to § 240.14a–3(b) to a security holder. This section does not affect the availability of any other means by which an issuer or other person may furnish a proxy statement pursuant to § 240.14a–3(a), or an annual report to

security holders pursuant to § 240.14a–3(b), to a security holder.

■ 10. Amend § 240.14a–101 by:

■ a. Revising the term ''annual report'' to read ''annual report on Form 10–K or Form 10–KSB'' in Instruction 1 to paragraph (d)(2)(ii)(L) of Item 7;

■ b. Revising the word ''mail'' to read ''send'' in Instruction 2 to paragraph (d)(2)(ii)(L) of Item 7; and

■ c. Revising Item 23.

The revision reads as follows.

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 23. Delivery of documents to security holders sharing an address. If one annual report to security holders, proxy statement, or Notice of Internet Availability of Proxy Materials is being delivered to two or more security holders who share an address in accordance with § 240.14a–3(e)(1), furnish the following information:

(a) State that only one annual report to security holders, proxy statement, or Notice of Internet Availability of Proxy Materials, as applicable, is being delivered to multiple security holders sharing an address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report to security holders, proxy statement, or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the documents was delivered and provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate copy of an annual report to security holders, proxy statement, or Notice of Internet Availability of Proxy Materials, as applicable;

(c) Provide the phone number and mailing address to which a security holder can direct a notification to the registrant that the security holder wishes to receive a separate annual report to security holders, proxy statement, or Notice of Internet Availability of Proxy Materials, as applicable, in the future; and

(d) Provide instructions how security holders sharing an address can request delivery of a single copy of annual reports to security holders, proxy statements, or Notices of Internet Availability of Proxy Materials if they are receiving multiple copies of annual reports to security holders, proxy statements, or Notices of Internet Availability of Proxy Materials.

■ 11. Amend § 240.14b–1 by:

■ a. Revising paragraphs (b)(2) including the Note and (c)(2)(i);

■ b. Revising the term ''annual reports'' to read ''annual reports to security holders'' in paragraphs (c)(2)(ii) and (c)(3);

■ c. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (c)(2)(ii);

■ d. Revising the word ''mail'' to read ''send'' in paragraph (c)(2)(ii); and

■ e. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(b) * * *

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual report to security holders from the registrant or other soliciting person, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual report to security holders.

Note to Paragraph (b)(2): At the request of a registrant, or on its own initiative so long as the registrant does not object, a broker or dealer may, but is not required to, deliver one annual report to security holders, proxy statement, information statement, or Notice of Internet Availability of Proxy Materials to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a–3(e)(1) (with respect to annual reports to security holders, proxy statements, and Notices of Internet Availability of Proxy Materials) and § 240.14c–3(c) (with respect to annual reports to security holders, information statements, and Notices of Internet Availability of Proxy Materials) applicable to registrants, with the exception of § 240.14a–3(e)(1)(i)(E), are satisfied instead by the broker or dealer.

(c) * * *

(2) * * *

(i) Its obligations under paragraphs (b)(2), (b)(3) and (d) of this section if the registrant or other soliciting person, as applicable, does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3) and (d) of this section; or

* * * * *

(d) *Compliance with § 240.14a–16.* If a registrant or other soliciting person informs the broker or dealer that it intends to rely on § 240.14a–16 to furnish proxy materials to beneficial owners and provides all of the relevant information listed in § 240.14a–16(d) to the broker or dealer, the broker or dealer shall:

(1) Prepare and send a Notice of Internet Availability of Proxy Materials containing the information required in paragraph (e) of this section to beneficial owners no later than:

(i) With respect to a registrant, 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; and

(ii) With respect to a soliciting person other than the registrant, the later of:

(A) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(B) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders.

(2) Establish a Web site at which beneficial owners are able to access the broker or dealer's request for voting instructions and, at the broker or dealer's option, establish a Web site at which beneficial owners are able to access the proxy statement and other soliciting materials, provided that such Web sites are maintained in a manner consistent with paragraphs (b), (c), and (k) of § 240.14a–16;

(3) Upon receipt of a request from the registrant or other soliciting person, send to security holders specified by the registrant or other soliciting person a copy of the request for voting instructions accompanied by a copy of the intermediary's Notice of Internet Availability of Proxy Materials 10 calendar days or more after the broker or dealer sends its Notice of Internet Availability of Proxy Materials pursuant to paragraph (d)(1); and

(4) Upon receipt of a request for a copy of the materials from a beneficial owner:

(i) Request a copy of the soliciting materials from the registrant or other soliciting person, in the form requested by the beneficial owner, within three business days after receiving the beneficial owner's request;

(ii) Forward a copy of the soliciting materials to the beneficial owner, in the form requested by the beneficial owner, within three business days after

receiving the materials from the registrant or other soliciting person; and

(iii) Maintain records of security holder requests to receive a paper or e-mail copy of the proxy materials in connection with future proxy solicitations and provide copies of the proxy materials to a security holder who has made such a request for all securities held in the account of that security holder until the security holder revokes such request.

(e) *Content of Notice of Internet Availability of Proxy Materials.* The broker or dealer's Notice of Internet Availability of Proxy Materials shall:

(1) Include all information, as it relates to beneficial owners, required in a registrant's Notice of Internet Availability of Proxy Materials under § 240.14a–16(d), provided that the broker or dealer shall provide its own, or its agent's, toll-free telephone number, an e-mail address, and an Internet Web site to service requests for copies from beneficial owners;

(2) Include a brief description, if applicable, of the rules that permit the broker or dealer to vote the securities if the beneficial owner does not return his or her voting instructions; and

(3) Otherwise be prepared and sent in a manner consistent with paragraphs (e), (f), and (g) of § 240.14a–16.

■ 12. Amend § 240.14b–2 by:

■ a. Revising the introductory text of paragraph (b)(3), the Note to paragraph (b)(3), and paragraph (c)(2)(i);

■ b. Revising the term ''annual reports'' to read ''annual reports to security holders'' in paragraph (c)(2)(ii) and (c)(4);

■ c. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (c)(2)(ii);

■ d. Revising the word ''mail'' to read ''send'' in paragraph (c)(2)(ii); and

■ e. Adding paragraphs (d) and (e).

The additions and revisions read as follows:

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(b) * * *

(3) Upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual report to security holders from the registrant or other soliciting person, the bank shall forward such materials to each beneficial owner on whose behalf it holds securities, no later than five business days after the date it receives such material and, where a proxy is solicited, the bank shall forward, with the other proxy soliciting material and/or the annual report to security holders, either:

* * * * *

Note to Paragraph (b)(3): At the request of a registrant, or on its own initiative so long as the registrant does not object, a bank may, but is not required to, deliver one annual report to security holders, proxy statement, information statement, or Notice of Internet Availability of Proxy Materials to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a–3(e)(1) (with respect to annual reports to security holders, proxy statements, and Notices of Internet Availability of Proxy Materials) and § 240.14c–3(c) (with respect to annual reports to security holders, information statements, and Notices of Internet Availability of Proxy Materials) applicable to registrants, with the exception of § 240.14a–3(e)(1)(i)(E), are satisfied instead by the bank.

* * * * *

(c) * * *

(2) * * *

(i) Its obligations under paragraphs (b)(2), (b)(3), (b)(4) and (d) of this section if the registrant or other soliciting person, as applicable, does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3), (b)(4) and (d) of this section; or

* * * * *

(d) *Compliance with § 240.14a–16.* If a registrant or other soliciting person informs the bank that it intends to rely on § 240.14a–16 to furnish proxy materials to beneficial owners and provides all of the relevant information listed in § 240.14a–16(d) to the bank, the bank shall:

(1) Prepare and send a Notice of Internet Availability of Proxy Materials containing the information required in paragraph (e) of this section to beneficial owners no later than:

(i) With respect to a registrant, 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; and

(ii) With respect to a soliciting person other than the registrant, the later of:

(A) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(B) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders.

(2) Establish a Web site at which beneficial owners are able to access the bank's request for voting instructions and, at the bank's option, establish a Web site at which beneficial owners are able to access the proxy statement and other soliciting materials, provided that such Web sites are maintained in a manner consistent with paragraphs (b), (c), and (k) of § 240.14a–16;

(3) Upon receipt of a request from the registrant or other soliciting person, send to security holders specified by the registrant or other soliciting person a copy of the request for voting instructions accompanied by a copy of the intermediary's Notice of Internet Availability of Proxy Materials 10 days or more after the bank sends its Notice of Internet Availability of Proxy Materials pursuant to paragraph (d)(1); and

(4) Upon receipt of a request for a copy of the materials from a beneficial owner:

(i) Request a copy of the soliciting materials from the registrant or other soliciting person, in the form requested by the beneficial owner, within three business days after receiving the beneficial owner's request;

(ii) Forward a copy of the soliciting materials to the beneficial owner, in the form requested by the beneficial owner, within three business days after receiving the materials from the registrant or other soliciting person; and

(iii) Maintain records of security holder requests to receive a paper or e-mail copy of the proxy materials in connection with future proxy solicitations and provide copies of the proxy materials to a security holder who has made such a request for all securities held in the account of that security holder until the security holder revokes such request.

(e) *Content of Notice of Internet Availability of Proxy Materials.* The bank's Notice of Internet Availability of Proxy Materials shall:

(1) Include all information, as it relates to beneficial owners, required in a registrant's Notice of Internet Availability of Proxy Materials under § 240.14a–16(d), provided that the bank shall provide its own, or its agent's, toll-free telephone number, e-mail address, and Internet Web site to service requests for copies from beneficial owners; and

(2) Otherwise be prepared and sent in a manner consistent with paragraphs (e), (f), and (g) of § 240.14a–16.

■ 13. Amend § 240.14c–2 by:

■ a. Revising paragraph (a); and

■ b. Adding paragraph (d).

The revision and addition read as follows:

§ 240.14c–2 Distribution of information statement.

(a)(1) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the registrant pursuant to section 14(a) of the Act:

(i) A written information statement containing the information specified in Schedule 14C (§ 240.14c–101);

(ii) A publicly-filed information statement, in the form and manner described in § 240.14c–3(d), containing the information specified in Schedule 14C (§ 240.14c–101); or

(iii) A written information statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter) and containing the information specified in such Form.

(2) Notwithstanding paragraph (a)(1) of this section:

(i) In the case of a class of securities in unregistered or bearer form, such statements need to be transmitted only to those security holders whose names are known to the registrant; and

(ii) No such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report to security holders or a proxy statement under § 240.14a–3(e)(2) if such section were applicable.

* * * * *

(d) A registrant may transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16; provided, however, that the registrant may revise the information required in the Notice of Internet Availability of Proxy Materials to reflect the fact that the registrant is not soliciting proxies for the meeting. This paragraph (d) provides a non-exclusive alternative by which a registrant may transmit an information statement pursuant to paragraph (a) of this section to a security holder. This paragraph (d) does not affect the availability of any other means by which a registrant may transmit an information statement pursuant to paragraph (a) of this section to a security holder.

■ 14. Amend § 240.14c–3 by:

■ a. Removing the authority citation following this section;

■ b. Revising paragraphs (a)(1) and (c); and

■ c. Adding paragraph (d).

The revisions and addition read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(1) The annual report to security holders shall contain the information specified in paragraphs (b)(1) through (b)(11) of § 240.14a–3.

* * * * *

(c) A registrant will be considered to have delivered a Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement to security holders of record who share an address if the requirements set forth in § 240.14a–3(e)(1) are satisfied with respect to the Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement, as applicable.

(d) A registrant may furnish an annual report to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16. This paragraph (d) provides a non-exclusive alternative by which a registrant may furnish an annual report pursuant to paragraph (a) of this section to a security holder. This paragraph (d) does not affect the availability of any other means by which a registrant may furnish an annual report pursuant to paragraph (a) of this section to a security holder.

■ 15. Amend § 240.14c–5 by revising the word ''mailed'' to read ''sent'' in the second sentence of the introductory text of paragraph (a).

■ 16. Amend § 240.14c–7 by revising paragraph (a)(5) before the Note and the word ''mail'' to read ''send'' in Note 2 following paragraph (a).

The revision reads as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners.

(a) * * *

(5) Upon the request of any record holder or respondent bank that is supplied with Notices of Internet Availability of Proxy Materials, information statements and/or annual reports to security holders pursuant to paragraph (a)(3) of this section, pay its reasonable expenses for completing the sending of such material to beneficial owners.

* * * * *

■ 17. Amend § 240.14c–101 by:

■ a. Revising the word ''mailing'' to read ''sending'' in Item 4, Instruction 1; and

■ b. Revising Item 5.

The revision reads as follows.

§ 240.14c–101 Schedule 14C. Information required in information statement.

* * * * *

Item 5. Delivery of documents to security holders sharing an address. If one annual report to security holders, information statement, or Notice of Internet Availability of Proxy Materials is being delivered to two or more security holders who share an address, furnish the following information in accordance with § 240.14a–3(e)(1):

(a) State that only one annual report to security holders, information statement, or Notice of Internet Availability of Proxy Materials, as applicable, is being delivered to multiple security holders sharing an address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report to security holders, information statement, or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the documents was delivered and provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate copy of an annual report to security holders, information statement, or Notice of Internet Availability of Proxy Materials, as applicable;

(c) Provide the phone number and mailing address to which a security holder can direct a notification to the registrant that the security holder wishes to receive a separate annual report to security holders, information statement, or Notice of Internet Availability of Proxy Materials, as applicable, in the future; and

(d) Provide instructions how security holders sharing an address can request delivery of a single copy of annual reports to security holders, information statements, or Notices of Internet Availability of Proxy Materials if they are receiving multiple copies of annual reports to security holders, information statements, or Notices of Internet Availability of Proxy Materials.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 18. The general authority citation for part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 19. Amend Item 4 to ''Part II—Other Information'' of Form 10–Q (referenced in § 249.308a) by revising paragraph (d) to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders.

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

■ 20. Amend Item 4 to ''Part II—Other Information'' of Form 10–QSB (referenced in § 249.308b) by revising paragraph (d) to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders.

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a-12(c), including the cost or anticipated cost to the registrant.

* * * * *

■ 21. Amend Item 4 to Part I of Form 10–K (referenced in § 249.310) by revising paragraph (d) to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders.

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

■ 22. Amend Item 4 to Part I of Form 10–KSB (referenced in § 249.310b) by revising paragraph (d) to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders.

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 23. The authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 24. Amend Sub-Item 77C to ''Instructions to Specific Items'' of Form N–SAR (referenced in §§ 249.330 and 274.101) by revising paragraph (d) to read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

* * * * *

SUB–ITEM 77C: Submission of matters to a vote of security holders

* * * * *

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

Dated: January 22, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–327 Filed 1–26–07; 8:45 am]

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Monday,
January 29, 2007

Part IV

Securities and Exchange Commission

17 CFR Part 240
Universal Internet Availability of Proxy Materials; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–55147; IC–27672; File No. S7–03–07]

RIN 3235–AJ79

Universal Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the proxy rules under the Securities Exchange Act of 1934 that would require issuers and other soliciting persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials. In a separate release, we concurrently are adopting rules that allow issuers and other soliciting persons to voluntarily furnish proxy materials to shareholders in this manner. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications.

DATES: Comments should be received on or before March 30, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/proposed.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–03–07 on the subject line; or
- Use the Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–03–07. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Internet Web site *http://www.sec.gov/rules/proposed.shtml*. Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rules 14a–7,[1] 14a–16,[2] 14b–1,[3] 14b–2,[4] 14c–2,[5] and 14c–3 [6] under the Securities Exchange Act of 1934.[7]

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[1] 17 CFR 240.14a–7.
[2] 17 CFR 240.14a–16.
[3] 17 CFR 240.14b–1.
[4] 17 CFR 240.14b–2.
[5] 17 CFR 240.14c–2.
[6] 17 CFR 240.14c–3.
[7] 15 U.S.C. 78a *et seq.*

I. Introduction

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. We are proposing amendments to the proxy rules that would require issuers and other soliciting persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials.[8] The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. We believe that universal Internet availability of proxy materials has the potential to enhance significantly the ability of investors to make informed voting decisions regarding the securities that they hold. In a companion release, we are adopting an Internet availability model that issuers and other soliciting persons may follow on a voluntary basis.[9] We are considering making the universal Internet availability amendments effective for large accelerated filers, not including registered investment companies, on January 1, 2008,[10] and for all other issuers, including registered investment companies, on January 1, 2009.

II. Description of Proposed Amendments

Under the proposal, an issuer that is required to furnish proxy materials to shareholders under the Commission's proxy rules would have to satisfy this requirement by posting its proxy materials on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing record holders with a notice

[8] For purposes of this release, the term ''proxy materials''includes proxy statements on Schedule 14A [17 CFR 240.14a–101], proxy cards, information statements on Schedule 14C [17 CFR 240.14c–101], annual reports to security holders required by Rules 14a–3 [17 CFR 240.14a–3] and 14c–3 [17 CFR 240.14c–3] of the Exchange Act, notices of shareholder meetings, additional soliciting materials, and any amendments to such materials. For purposes of this release, the term does not include materials filed under Rule 14a–12 [17 CFR 240.14a–12].

[9] Release No. 34–55146 (Jan. 22, 2007).

[10] A large accelerated filer, as defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2], is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $700 million or more, as measured on the last business day of the issuer's most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.

informing them that the materials are available and explaining how to access those materials. Issuers and intermediaries also would be required to follow the universal Internet availability model [11] to furnish proxy materials to beneficial owners. Shareholders and other persons conducting their own proxy solicitations also would be required to follow the universal Internet availability model. Shareholders would retain the ability to request paper or e-mail copies for a particular meeting or to make a permanent request for proxy materials relating to all shareholder meetings.[12] By requiring universal Internet availability of proxy materials, the proposed amendments are designed to enhance the ability of investors to make informed voting decisions and to expand use of the Internet to ultimately lower the costs of proxy solicitations.

A. Universal Internet Availability Model for Issuers

Under the proposal, an issuer would be required to comply with the following requirements, which are substantially similar to the requirements that we are adopting under the voluntary model.[13] First, the issuer would have to send a Notice of Internet Availability of Proxy Materials (''Notice'') to shareholders at least 40 calendar days before the shareholder meeting date, or if no meeting is to be held, at least 40 calendar days before the date that votes, consents, or authorizations may be used to effect a corporate action, indicating that the issuer's proxy materials are available on a specified Internet Web site and explaining how to access those proxy materials.

The Notice would have to contain the same information that is required under the voluntary model, including the following: [14]

- A prominent legend in bold-face type that states:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].

- This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.
- The [proxy statement] [information statement] [annual report to security holders] [is/are] available at [Insert Web site address].
- If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.''

- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted on and the issuer's recommendations regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site;
- (1) A toll-free telephone number; (2) an e-mail address; and (3) an Internet Web site address where the shareholder can request a copy of the proxy materials, for all meetings and for the particular meeting to which the Notice relates;
- Any control/identification numbers that the shareholder needs to access his or her proxy card;
- Instructions on how to access the proxy card, provided that such instructions do not enable a shareholder to execute a proxy without having access to the proxy statement and annual report; and
- Information about attending the shareholder meeting and voting in person.

The Notice would have to be written in plain English. The Notice may contain only the information specified by the rules and any other information required by state law, if the issuer chooses to combine the Notice with any shareholder meeting notice that State law may require. However, the Notice may contain a protective warning to shareholders, advising them that no personal information other than the identification or control number is necessary to execute a proxy. The issuer would have to file its Notice with the Commission pursuant to Rule 14a–6(b) [15] no later than the date that it first sends the Notice to shareholders.

An issuer would have to make all proxy materials identified in the Notice publicly accessible, free of charge, at the Web site address specified in the Notice on or before the date that the Notice is sent to the shareholder. The specified Web site may not be the Commission's EDGAR system. The issuer also would have to post any subsequent additional soliciting materials on the Web site no later than the date on which such materials are first sent to shareholders or made public. The materials would have to be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.[16]

The proxy materials would have to remain available on that Web site through the conclusion of the shareholder meeting. An issuer also would have to provide shareholders with a method to execute proxies as of the time the Notice is first sent to shareholders. It may do so through a variety of methods, including providing an electronic voting platform or a toll-free telephone number for voting.[17]

An issuer would be required to provide copies at no charge to requesting shareholders. It also would have to allow shareholders to make a permanent election to receive paper or e-mail copies of proxy materials distributed in connection with future proxy solicitations of the issuer. Further, the issuer would have to provide a toll-free telephone number, e-mail address, and Internet Web site address as a means by which a shareholder could request a copy of the proxy materials for the particular shareholder meeting referenced in the Notice or make a permanent election to receive copies of the proxy materials on a continuing basis with respect to all meetings. The issuer also may include a pre-addressed, postage-paid reply card with the Notice that shareholders could use to request a copy of the proxy materials.

An issuer would not be permitted to send a proxy card to a shareholder until 10 calendar days or more after the date it sent the Notice to the shareholder, unless the proxy card is accompanied or preceded by a copy of the proxy statement and any annual report to security holders sent via the same medium. Issuers would be able to household the Notice and other proxy materials pursuant to Rule 14a–3(e).[18] An issuer would have to maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing that Web site.[19] An issuer also could not use any e-mail address provided by a

[11] In this release, we are referring to the proposal as the ''universal Internet availability'' model. This model is substantially similar to the ''notice and access'' model for electronically furnishing proxy materials referred to in Release No. 34–55146 that issuers and other soliciting persons may follow on a voluntary basis.

[12] A shareholder may revoke a permanent election to receive paper or e-mail copies at any time.

[13] See 17 CFR 240.14a–16 [17 CFR 240.14a–16].

[14] Appropriate changes must be made if the issuer is providing an information statement pursuant to Regulation 14C or seeking to effect a corporate action by written consent.

[15] 17 CFR 240.14a–6(b).

[16] See Section II.A.3 of Release 34–55146.

[17] As noted above, such a telephone number may appear on the Web site, but not on the Notice.

[18] 17 CFR 240.14a–3(e).

[19] See Section II.A.1.b.iii of Release No. 34–55146.

shareholder solely to request a copy of proxy materials for any purpose other than to send a copy of those materials to that shareholder. The issuer also may not disclose a shareholder's e-mail address to any person other than the issuer's employee or agent to the extent necessary to send a copy of the proxy materials to a requesting shareholder. An issuer could not use the universal Internet availability model in the context of a business combination transaction.

Request for Comment

- What advantages would universal Internet availability of proxy materials have for investors, issuers and other soliciting persons? What disadvantages could the proposal have? How could any potential disadvantages be mitigated?
- Should we require issuers to follow the universal Internet availability model as proposed? If not, why not? Would requiring issuers to follow the universal Internet availability model impose significant costs on issuers? If so, what would they be? How could the proposal be modified to mitigate these costs? Would requiring issuers to follow the universal Internet availability model positively or negatively affect shareholder voting participation rates?
- Should we exempt certain types of issuers from the proposed universal Internet availability model? For example, should we exempt small business issuers? Should we require mutual funds, closed-end funds, business development companies and other investment companies to follow the model? Should the model be equally applicable to all types of shareholders and/or all types of solicitations except those relating to business combination transactions?
- Under the voluntary model, an issuer may choose not to rely on the universal Internet availability model if it conflicts with state law. We are not aware of any state law conflicts. Are there any state laws that would conflict with the universal Internet availability model?
- Should we modify any aspects of the universal Internet availability model? If so, how should the model be modified and why? Should there be any changes to the timeframes for sending the Notice, the contents of the Notice or the types of materials that can be sent with the Notice? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?
- Some proxy solicitations are not subject to the requirements of Section 14(a) of the Exchange Act, such as proxy solicitations with respect to foreign private issuers. However, we understand that proxy solicitations relating to foreign private issuers generally are processed and distributed in accordance with the same procedures set forth in our proxy rules because intermediaries and their agents are not able to apply cost-effectively different procedures to exempt proxy solicitations. Would a universal Internet availability model create a burden on those issuers who are not subject to Section 14(a)? If so, how can those burdens best be addressed?

B. Implications of the Universal Internet Availability Model for Intermediaries

With respect to beneficial owners, the issuer or other soliciting person would have to provide each intermediary with the information necessary to prepare the intermediary's Notice in sufficient time for the intermediary to prepare and send its Notice to beneficial owners at least 40 calendar days before the shareholder meeting date.[20] The intermediary's Notice would contain generally the same types of information as an issuer's Notice, but would be tailored specifically for beneficial owners.[21] Intermediaries would be required to prepare and send this tailored Notice to beneficial owners. The intermediaries also would be required to forward paper or e-mail copies to beneficial owners upon request. Finally, intermediaries would have to post their requests for voting instructions on an Internet Web site, permit shareholders to make a permanent election to receive paper or e-mail copies of the proxy materials, keep records of those elections, and deliver copies of the proxy materials according to those elections.

Request for Comment

- Should we make any modifications to the universal Internet availability model as it would apply to intermediaries if we adopt this proposal? If so, how should the model be modified and why? Should there be any changes to the timeframes for sending the intermediary's Notice, the contents of the intermediary's Notice or the types of materials that could be sent with the Notice? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?

C. Universal Internet Availability Model for Soliciting Persons Other Than the Issuer

A soliciting person other than the issuer also would be required to follow the universal Internet availability model. Consistent with the existing proxy rules and the voluntary model, the proposed rules treat such soliciting persons differently from the issuer in certain respects.

First, a soliciting person is not required to solicit every shareholder. It may select the specific shareholders from whom it wishes to solicit proxies. Under the proposed universal Internet availability model, a soliciting person other than the issuer would be able to choose to send Notices only to those shareholders who have not previously requested paper copies.[22]

Second, soliciting persons other than the issuer would be required to send a Notice to shareholders by the later of:

- 40 calendar days prior to the shareholder meeting date or, if no meeting is to be held, 40 calendar days prior to the date that votes, consents, or authorizations may be used to effect the corporate action; or
- 10 calendar days after the date that the issuer first sends its proxy materials to shareholders.

Finally, if at the time the Notice is sent, a soliciting person other than the issuer is not aware of all matters on the shareholder meeting agenda, the Notice would have to provide a clear and impartial identification of each separate matter to be acted upon at the meeting, to the extent known by the soliciting person. The soliciting person's Notice also would have to include a clear statement that there may be additional agenda items that the soliciting person is unaware of, and that the shareholder cannot direct a vote for those items on the soliciting person's proxy card provided at that time. If a soliciting person other than the issuer sends a proxy card that does not reference all matters that shareholders will act upon at the meeting, the Notice would have

[20] A soliciting person other than the issuer must provide intermediaries with such information in sufficient time for the intermediaries to prepare and send the intermediary's Notice by the later of: (1) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or (2) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders. See Rule 14a–16(l)(2) [17 CFR 240.14a–16(l)(2)].

[21] For a more complete discussion of the content of the intermediary's Notice, see Section II.B.2 of Release No. 34–55146.

[22] Under Rule 14a–7 [17 CFR 240.14a–7], an issuer is required to either mail the Notice on behalf of the soliciting person, in which case the soliciting person can request that the issuer send Notices only to shareholders who have not requested paper copies, or provide the soliciting person with a shareholder list, indicating which shareholders have requested paper copies. For a more complete discussion of the interaction of the model with Rule 14a–7, see Section II.C.4 of Release No. 34–55146.

to clearly state whether execution of the proxy card would invalidate a shareholder's prior vote using the issuer's card on matters not presented on the soliciting person's proxy card.

Request for Comment

• Should we require soliciting persons other than the issuer to follow the universal Internet availability model? If not, why not? Would the universal Internet availability model impose significant costs on soliciting persons other than the issuer? If so, what would they be and how could they be mitigated?

• Rule 14a–2(a)(6) [23] permits a soliciting person to solicit proxies without otherwise complying with Rules 14a–3 through 14a–15 [24] by placing a newspaper advertisement which does no more than inform shareholders of (1) a source from which they may obtain copies of a proxy statement, proxy card and other soliciting materials, (2) the name of the issuer, (3) the reason for the advertisement, and (4) the proposals to be acted upon by shareholders. Should the universal Internet availability model apply to such solicitations? If so, how should it apply? In light of the amendments, should we keep such a model available to soliciting persons?

• Should we make any revisions to Rule 14a–7 to accommodate the universal Internet availability model?

• If we adopt the universal Internet availability model, should we modify any aspects of the model as it relates to soliciting persons other than the issuer? If so, how should the proposed model be modified and why? Should there be any changes to the timeframes for sending the Notice, the contents of the Notice or the types of materials that can be sent with it? Should any revisions be made to the Web site posting requirements or the requirements to send copies upon request?

D. Option To Send Full Set of Proxy Materials With Notice Under the Universal Internet Availability Model

Under the voluntary model that we are adopting, issuers or other soliciting persons are obligated to provide a paper or e-mail copy of the proxy materials upon request to a shareholder to whom they have provided a Notice. Issuers and other soliciting persons are not allowed to send the Notice with any document other than a notice of shareholder meeting required under state law and a pre-printed, postage-paid reply card for a shareholder to request a copy of the proxy materials.

Under the proposed universal Internet availability model, a full set of proxy materials, including a proxy statement, annual report (if required), and proxy card or request for voting instructions could accompany the Notice that is sent to shareholders and beneficial owners.[25] This would allow an issuer or other soliciting person that wants to furnish paper copies of the proxy materials to some or all of its shareholders in the first instance to do so in one delivery with the Notice. This is different from the voluntary notice and access model because presumably an issuer or soliciting person would not choose to rely on the model if it intended to furnish paper copies of the proxy materials to all of the shareholders it was soliciting. As this proposal would require an issuer to follow the universal Internet availability model, it is necessary to expressly provide a means for issuers that also wish to send paper copies of the proxy materials along with the Notice as part of the same delivery package to shareholders to do so under the model.

The proposal would not permit an issuer or other soliciting person to initially send the Notice with other proxy materials, unless it is accompanied by a full set of proxy materials.[26] For example, an issuer or other soliciting person would not be permitted to send initially only the Notice and a proxy card to shareholders.[27] Instead, it would have to send a full set of proxy materials with the Notice, or send only the Notice. An issuer or other soliciting person choosing to deliver a full set of proxy materials with the Notice would be permitted to revise its Notice to delete any reference to a shareholder's right to request copies of the materials because all required proxy materials already would have been sent to shareholders.

If an issuer or other soliciting person sends a full set of the proxy materials with the Notice, it need not comply with the deadlines in Rule 14a–16 for sending the Notice. Thus, if an issuer is unable or unwilling to meet the 40-day deadline, it still may begin its solicitation after that deadline provided that it accompanies its Notice with a full set of the proxy materials. Similarly, a soliciting person other than the issuer that fails to send its Notice by the later of 40 calendar days before the meeting date or 10 calendar days after the issuer first sends it proxy materials could begin its solicitation after that deadline if it accompanies its Notice with a full set of proxy materials.

We also propose to permit a registered investment company to send its prospectus and/or report to shareholders together with the Notice, with or without the proxy statement and form of proxy. While the proxy rules do not require registered investment companies to furnish annual reports to security holders with their proxy materials, under the Investment Company Act of 1940, registered investment companies are required to transmit a report to shareholders at least semi-annually.[28] In addition, many mutual funds send their prospectuses to their existing shareholders annually in order to meet prospectus delivery obligations with respect to additional share purchases. Without our proposal for registered investment companies, they would be required to deliver both their prospectuses and shareholder reports separately from the Notice, which could result in increased costs to fund shareholders.

Request for Comment

• Should issuers and other soliciting persons be allowed to accompany the Notice with a full set of proxy materials?

• Is there potential for confusion if issuers and other soliciting persons choose to deliver to shareholders a full set of proxy materials in paper, but also send a Notice to them? If an issuer chooses to send a full set of the proxy materials with the Notice to a shareholder under this option, should the rules permit the issuer to incorporate the information required in the Notice into the proxy statement or some other document, rather than prepare a separate Notice?

• Should issuers, soliciting persons and intermediaries be permitted to remove the right to request copies if a full set of the proxy materials is included with the Notice, as proposed?

• Should registered investment companies be permitted to accompany the Notice with a prospectus and/or report to shareholders? If so, should they be permitted to do this without also including a proxy statement and

[23] 17 CFR 240.14a–2(a)(6).

[24] 17 CFR 240.14a–3 through 240.14a–15.

[25] The requirement in Exchange Act Rules 14a–3(b) and 14c–3(a) to furnish annual reports to security holders does not apply to registered investment companies [17 CFR 240.14a–3(b) and 240.14c–3(a)]. A soliciting person other than the issuer also is not subject to this requirement.

[26] A ''full set'' of proxy materials would contain (1) a proxy statement or information statement, (2) an annual report if one is required by Rule 14a–3(b) or Rule 14c–3(a), and (3) a proxy card or, in the case of a beneficial owner, a request for voting instructions, if proxies are being solicited.

[27] However, it may send the Notice and proxy card together 10 calendar days or more after it initially sends the Notice. See Rule 14a–16(h) [17 CFR 240.14a–16(h)].

[28] 15 U.S.C. 80a–29(e).

form of proxy? Is there any other category of issuer for which a similar accommodation would be appropriate?

• The proposed deadlines for sending the Notice are intended to provide shareholders with sufficient time to request copies. If an issuer or other soliciting person is unable to meet the deadlines under the universal Internet availability model, should either be permitted to begin its solicitation after those deadlines have passed if a full set of proxy materials accompanied the Notice, as proposed?

• If an issuer or other soliciting person elected to send a full set of proxy materials with the Notice, should it be permitted to include additional soliciting materials with the Notice as well?

• Are there any complications that might arise with respect to intermediaries by providing issuers and other soliciting persons the option to provide a full set of proxy materials? If so, how could these complications be addressed?

III. Compliance Dates

Issuers and other soliciting persons may begin complying with the voluntary model on July 1, 2007. We are soliciting comment on compliance dates for the universal Internet availability model. If adopted, we are considering making the universal Internet availability model effective for large accelerated filers, not including registered investment companies, on January 1, 2008, and for all other issuers, including registered investment companies, on January 1, 2009. Such a tiered compliance regime may lessen any burden imposed by requiring smaller companies to follow the model.

In determining an appropriate compliance date for the universal Internet availability model, we are considering the extent to which we will be able to study the implementation of the voluntary model before adopting the universal Internet availability model. The industry's experience with these models will provide information on whether the rules are achieving their intended purposes. We welcome information from issuers and all other parties involved in the proxy distribution process. This information would include:

• The ability of issuers to provide shareholders with qualitatively better disclosure using the additional features available on the Internet, including XBRL, graphical, comparative and interactive features;

• The extent to which issuers and other soliciting persons avail themselves of opportunities to exploit other linked data and resources, and make these available to shareholders in ways that are not possible with printed material;

• The impact on shareholder understanding of complex material;

• The effect of the model on proxy voting;

• The impact on costs of proxy solicitation;

• Shareholder voting data before and after adoption, including data on shareholder voting participation rates;

• The number of paper copies of proxy materials requested by shareholders;

• Any problems encountered with implementing the program, including problems encountered by smaller issuers; and

• Shareholder satisfaction with their choices of ways to communicate with the company.

Request for Comment

• What compliance dates would be appropriate for the universal Internet availability model? Should we permit at least one proxy season under the voluntary model to pass before requiring use of the universal Internet availability model? What compliance dates would give us and the market sufficient time to examine the performance of the voluntary model if we decide to convert to the universal Internet availability model after January 1, 2008?

• Should we adopt a tiered system of compliance dates for compliance with the universal Internet availability model, as we are considering doing? For example, should we require that some class of issuer, such as large accelerated filers, comply with the universal Internet availability model initially, and that other filers comply at a later date? If so, what should those dates be and which category of filers should go first?

• If we were to adopt a tiered system of compliance dates, how many tiers should there be? What would be the appropriate classes (*e.g.*, large accelerated filers, accelerated filers, or small business issuers) for each tier? Should we divide issuers differently?

• What compliance dates would be appropriate for mutual funds, closed-end funds, business development companies, and other investment companies?

• Should there be a different compliance date for soliciting persons other than issuers? If so, why and what compliance dates would be appropriate?

IV. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or

(3) Other matters that may have an effect on the proposals contained in this release.

With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

Certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''), including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. The titles for the collections of information are: [29]

Regulation 14A (OMB Control No. 3235–0059)

Regulation 14C (OMB Control No. 3235–0057)

We requested public comment on these collections of information in the release proposing the notice and access model as a voluntary model for disseminating proxy materials,[30] and submitted them to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. We received approval for the collection of information. We are submitting a revised PRA analysis to OMB in conjunction with the release adopting the notice and access model as a voluntary model. In that release, we assumed conservatively that all issuers and other persons soliciting proxies would follow the voluntary model because the proportion of issuers and other soliciting persons that would elect to follow the model was uncertain.

The proposed rules would require all issuers and other soliciting persons to follow the model. Therefore, our preliminary estimate is that the rule amendments that we are proposing in this release will not impose any new recordkeeping or information collection requirements beyond those described in

[29] In connection with the proposing release for the voluntary model, we described the proposed Notice of Internet Availability of Proxy Materials as a new collection of information, rather than a part of our existing collections of information related to Regulations 14A and 14C. However, we subsequently submitted to OMB a PRA analysis based on revisions to the Regulation 14A and Regulation 14C collections. Although we did not revise our burden estimates associated with the Notice, the collection of information approved by OMB related to revisions to existing collections of information (Regulations 14A and 14C) and therefore we refer to those collections of information in this PRA discussion.

[30] Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

the release adopting the voluntary model, or necessitate revising the burden estimates for any existing collections of information requiring OMB's approval. Further, our preliminary estimate is that the one significant modification to the notice and access model we are proposing for the universal Internet availability model, the option to provide a full set of proxy materials with the Notice, does not require us to modify our burden estimates for the Regulation 14A and 14C collections of information. We solicit comment on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed amendments.

VI. Cost-Benefit Analysis

A. Background

We are proposing revisions to the proxy rules under the Exchange Act to require issuers and other soliciting persons to follow the universal Internet availability model for furnishing proxy materials. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications.

B. Summary of Proposals

The proposals would provide a universal Internet availability model that would require issuers and other soliciting persons to furnish proxy materials by posting them on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access them. Under this model, shareholders may request copies of the proxy materials from the issuer. Shareholders receiving a Notice from a soliciting person other than the issuer may also request copies from that person. However, neither an issuer nor a soliciting person other than the issuer would have to provide copies on request if it chooses to send a full set of proxy materials, including the proxy statement, annual report (if required) and proxy card, with the Notice. The proposals also would require intermediaries to follow similar procedures to provide beneficial owners with access to the proxy materials.

C. Benefits

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to lower the costs of proxy solicitations, and to improve shareholder communications. The proposed amendments, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. As technology continues to progress, accessing the proxy materials on the Internet should increase the utility of our disclosure requirements to shareholders. Information in electronic documents is often more easily searchable than paper documents. Users are better able to go directly to any section of the document that they believe to be the most important. They also permit users to more easily manipulate data and enter data into analytical tools such as spreadsheet programs. Such tools enable users to compare relevant data about several companies more easily.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may encourage improved shareholder communications in other ways. Electronic innovations such as Internet chat rooms and bulletin boards may enhance shareholders' ability to communicate not only with management, but with each other. Such direct access may improve shareholder relations to the extent shareholders feel that they have enhanced access to management. Centralizing an issuer's disclosure on a Web site may facilitate shareholder access to other important information, such as research reports and news concerning the issuer. We believe that migrating proxy disclosure to the Internet and uniform use of the Internet for that purpose could ultimately lower the cost of soliciting proxies for all issuers.

In terms of paper processing alone, the benefits of the rule amendments are limited by the volume of paper processing that would occur otherwise. As we note in the companion adopting release, Automatic Data Processing, Inc. (ADP) handles the vast majority of proxy mailings to beneficial owners.[31] ADP publishes statistics that provide useful background for evaluating the likely consequences of the rule amendments. ADP estimates that, during the 2006 proxy season,[32] over 69.7 million proxy material mailings were eliminated through a variety of means, including householding and existing electronic delivery methods. During that season, ADP mailed 85.3 million paper proxy items to beneficial owners. ADP estimates that the average cost of printing and mailing a paper copy of a set of proxy materials during the 2006 proxy season was $5.64. We estimate that issuers and other soliciting persons spent, in the aggregate, $481.2 million in postage and printing fees alone to distribute paper proxy materials to beneficial owners.[33] Approximately 50% of all proxy pieces mailed by ADP in 2005 were mailed during the proxy season.[34] Therefore, we estimate that issuers and other persons soliciting proxies from beneficial owners spent approximately $962.4 million in 2006 in printing and mailing costs.[35]

In the companion adopting release, we based our estimates on an assumption that issuers representing between 10% and 50% of proxy mailings would follow the notice and access model. Under our proposed universal Internet availability model, we estimate that the paper-related savings would be similar for firms that choose to mail full sets of proxy materials only to those investors who request them. Issuers that choose to mail full sets of proxy materials with the Notice would not realize any paper-related savings. Based on the assumption that 19% of shareholders would choose to have paper copies sent to them when an issuer relies on the notice and access model, we estimate that the proposal could produce annual paper-related savings ranging from $48.3 million (if issuers who are responsible for 10% of all proxy mailings choose to mail proxy materials only to those who request them) to $241.4 million (if issuers who are responsible for 50% of all proxy mailings choose to mail proxy materials only to those who request them).[36] This

[31] We expect savings per mailing to record holders to roughly correspond to savings per mailing to beneficial owners.

[32] According to ADP data, the 2006 proxy season extended from February 15, 2006 to May 1, 2006.

[33] 85.3 million mailings × $5.64/mailing = $481.2 million.

[34] According to ADP, in 2005, 90,013,175 of 179,833,774, or 50%, of proxy pieces were mailed during the 2005 proxy season.

[35] $481.2 million/50% = $962.4 million.

[36] This range of potential cost savings depends on data on proxy material production, home printing costs, and first-class postage rates provided by Lexecon and ADP, and supplemented with modest 2006 USPS postage rate discounts. The fixed costs of notice and proxy material production are estimated to be $2.36 per shareholder. The variable costs of fulfilling a paper requests, including handling, paper, printing and postage, are estimated

Continued

estimate excludes the effect of the provision of the amendments that would allow shareholders to make a permanent request for paper copies. That provision would enable issuers and other soliciting persons to take advantage of bulk printing and mailing rates for those requesting shareholders, and therefore should reduce the on-demand costs reflected in these calculations.

We estimate that approximately 19% of shareholders would request paper copies. Commenters on the initial Internet availability proposal provided alternate estimates. For example, Computershare, a large transfer agent, estimated that less than 10% of shareholders would request paper copies.[37] According to a survey conducted by Forrester Research for ADP, 12% of shareholders report that they would always take extra steps to get their proxy materials, and as many as 68% of shareholders report that they would take extra steps to get their proxy materials in paper at least some of the time. The same survey also finds that 82% of shareholders report that they look at their proxy materials at least some of the time. These survey results suggest that shareholders may review proxy materials even if they do not vote. During the 2005 proxy season, only 44% of accounts were voted by beneficial owners. Put differently, 56%, or 84.8 million accounts, did not return requests for voting instructions. Our estimate that 19% of shareholders would request paper copies reflects the diverse estimates suggested by the available data.

Although we expect the savings to be significant, the actual paper-related benefits would be influenced by several factors that we estimate would become less important over time. First, to the extent that some shareholders request paper copies of the proxy materials, the benefits of the amendments in terms of savings in printing and mailing costs would be reduced. Issuers are concerned that the cost per paper copy would be significantly greater if they have to mail copies of paper proxy materials to shareholders on an on-demand basis, rather than mailing the paper copies in bulk. Thus, if a significant number of shareholders request paper, the savings would be substantially reduced. Second, issuers may face a high degree of uncertainty about the number of requests that they may get for paper proxy materials and may maintain unnecessarily large inventories of paper copies as a precaution. As issuers gain experience with the number of sets of paper materials that they need to supply to requesting shareholders, and as shareholders become more comfortable with receiving disclosures via the Internet, the number of paper copies is likely to decline, as would issuers' tendency to print many more copies than ultimately are requested. This would lead to growth in paper-related savings from the rule amendments over time.

Additional benefits would accrue from reductions in the costs of proxy solicitations by persons other than the issuer. Under the proposal, persons other than the issuer also can rely on the notice and access model, but would be able to limit the scope of their proxy solicitations to shareholders who have not requested paper copies of the proxy materials. We expect that the flexibility afforded to persons other than the issuer under the proposal ultimately would reduce the cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a source of discipline in the corporate governance process.

The effect of the amendments of lessening the costs associated with a proxy contest would be limited by the persistence of other costs. One commenter on the proposed voluntary model noted that a large percentage of the costs of effecting a proxy contest go to legal, document preparation, and solicitation fees, while a much smaller percentage of the costs is associated with printing and distribution of materials.[38] However, other commenters suggested that the paper-related cost savings that can be realized from the rule amendments are substantial enough to change the way many contests are conducted.[39]

Finally, some benefits from the proposal may arise from a reduction in what may be regarded as the environmental costs of the proxy solicitation process.[40] Specifically, proxy solicitation involves the use of a significant amount of paper and printing ink. Paper production and distribution can adversely affect the environment, due to the use of trees, fossil fuels, chemicals such as bleaching agents, printing ink (which contains toxic metals), and cleanup washes. To the extent that paper producers internalize these costs and the costs are reflected in the price of paper and other materials consumed during the proxy solicitation process, our dollar estimates of the paper-related benefits reflect the elimination of these adverse environmental consequences under the proposed amendments.

D. Costs

An issuer's compliance with the proposed model, if adopted, would introduce several new costs into the process of proxy distribution for issuers that otherwise would choose not to follow the notice and access model voluntarily and their shareholders, including the following: (1) The cost of posting proxy materials on an Internet Web site and providing a means to vote on that Web site; (2) the cost of preparing, producing, and sending the Notice to shareholders; (3) the cost of processing shareholders' requests for copies of the proxy materials and maintaining their permanent election preferences; and (4) the cost to shareholders of printing proxy materials at home that would otherwise be printed by issuers.

Under the proposed rules, issuers and other soliciting persons would be required to post their materials on an Internet Web site and provide a means to vote on that Web site. We believe the cost of obtaining a Web site and posting materials on it would be minimal to issuers and other soliciting persons. The rules do not require elaborate Web site design. Posting a document on such a Web site and providing a means to vote, such as posting a telephone number on that Web site for voting, is a fairly simple and inexpensive process. We believe the costs of these requirements would be minimal.

A soliciting person, including an issuer, would be required to provide a means to vote on the Internet Web site. Although, as noted above, posting a telephone number on a Web site would impose minimal cost, the soliciting person would have to have a means for collecting those votes. Thus, at a minimum, the soliciting person would have to provide an automated system for collecting votes, either over the Internet or by telephone, or have people staffing telephones to receive the votes. We are soliciting comment on the cost of establishing such mechanisms for

to be $6.11 per copy requested. Assumptions about percentages of shareholders requesting paper copies are derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Our estimate of the total number of shareholders is based on data provided by ADP and SIA. According to SIA's comment letter, 78.49% of shareholders held their shares in street name. We estimate that the total number of proxy pieces mailed equals the number of pieces mailed to beneficial shareholders by ADP in 2005 divided by 78.49%, which equals 179,833,774 / 78.49%, or 229,116,797.

[37] See letter from Computershare.

[38] See letter from ADP.

[39] See letters from CALSTRS, Computershare, ISS, and Swingvote.

[40] See letter from American Forests.

accepting votes. An issuer would also have to maintain records of shareholders who have requested paper or e-mail copies for all future solicitations. In the companion release adopting the voluntary notice and access model, we estimated that this cost to issuers and intermediaries would be approximately $9,977,500.[41]

Under the proposed rules, intermediaries would be required to follow similar requirements as would issuers, including preparing Notices, providing a means to vote and maintaining records of shareholders who have requested paper or e-mail copies for future solicitations. We are soliciting comment on those costs as well.

As we stated in the companion adopting release, the paper-related savings to issuers and other soliciting persons discussed under the benefits section above are adjusted for the cost of printing and sending Notices. If Notices are sent by mail, then the mailing costs may vary widely among parties. Postage rates likely would vary from $0.14 to $0.39 per Notice mailed, depending on numerous factors. In our estimates of the paper-related benefits above, we assume that each Notice costs a total of $0.13 to print and $0.29 to mail. Based on data from ADP and SIA, we estimate that issuers and other soliciting persons send a total of 229,116,797 accounts processed per year.[42] In the companion release, we assume that only those firms that choose to adopt the notice and access model would incur these printing and mailing costs. Under the proposed universal Internet availability model, all issuers would be required to furnish each of its shareholders with a copy of the Notice. Firms that choose to mail full sets of proxy materials only to those investors who request them would incur the printing cost and cost of mailing the Notice separately from the proxy materials. Firms that choose to mail full sets of proxy materials with the Notice would incur the printing costs, but not the additional mailing cost. These printing costs represent the incremental cost of moving to universal Internet availability from the model in the companion adopting release. If issuers who are responsible for 10% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them, the remaining 90% of issuers would incur the total cost of $26.8 million to print the Notice. If issuers who are responsible for 50% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them, the remaining 50% of issuers would incur the total cost of $14.9 million to print the Notice.[43]

The universal Internet availability model also requires minimal added disclosures in the form of a Notice to shareholders, informing them that the proxy materials are available at a specified Internet Web site. In the companion adopting release, we assumed, for purposes of the PRA, that all issuers and other soliciting persons would elect to follow the procedures, resulting in a total estimated cost to prepare the Notice of approximately $2,020,475.[44] Based on the percentage of issuers that we estimated would adopt the notice and access model, these costs could range between $1,010,238 (if 50% of issuers adopted the notice and access model) and $1,818,432 (if 10% of issuers adopted the notice and access model). The proposal also would require issuers and intermediaries to maintain records of shareholders who have requested paper and e-mail copies for future proxy solicitations. We estimate that this total cost to all issuers and intermediaries would be approximately $9,977,500,[45] with an incremental cost due to the proposals of $4,988,750 (if 50% of issuers adopted the notice and access model voluntarily), and $8,977,500 (if 10% of issuers adopted the notice and access model voluntarily).

Issuers and their intermediaries would incur additional processing costs if the proposal is adopted. The proposal would require an intermediary such as a bank, broker-dealer, or other association to follow the proposed model if an issuer so requests. An intermediary that follows the proposed model would be required to prepare its own Notice to beneficial owners, along with instructions on when and how to request paper copies and the website where the beneficial owner can access his or her request for voting instructions. Since issuers reimburse intermediaries for their reasonable expenses of forwarding proxy materials and intermediaries and their agents already have systems to prepare and deliver requests for voting instructions, we do not expect the involvement of intermediaries in sending their Notices to significantly affect the costs associated with the proposal.

Under the proposed model, a beneficial owner would be required to request a copy of proxy materials from its intermediary. The costs of collecting and processing requests from beneficial owners may be significant, particularly if the intermediary receives the requests of beneficial owners associated with many different issuers that specify different methods of furnishing the proxy. We expect that these processing costs would be highest in the first year after adoption but would subsequently decline as intermediaries develop the necessary systems and procedures and as beneficial owners increasingly become comfortable with accessing proxy materials online. In addition, the proposal would permit a beneficial owner to specify its preference on an account-wide basis, which should reduce the cost of processing requests for copies. These costs are ultimately paid by the issuer.

Shareholders obtaining proxy materials online would incur any necessary costs associated with gaining access to the Internet. In addition, some shareholders may choose to print out the posted materials, which would entail paper and printing costs. We estimate that approximately 10% of all shareholders would print out the posted materials at home at an estimated cost of $7.05 per proxy package. Based on these assumptions, the proposal is estimated to produce incremental annual home printing costs ranging from $16 million (if issuers who are responsible for 10% of all current proxy mailings choose to mail full sets of proxy materials only to those investors who request them) to $80 million (if

[41] In that release, we estimated that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimated the average hourly cost of issuer and intermediary personnel time to be $125, resulting in a total cost of $9,977,500 for issuer and intermediary personnel time. See Release No. 34–55146.

[42] See *www.ics.adp.com/release11/public_site/about/stats.html* stating that ADP handled 179,833,774 in fiscal year 2005 and letter from SIA stating that beneficial accounts represent 78.49% of total accounts.

[43] 90% × 229,116,797 × $0.13 = $26.8 million; 50% × 229,116,797 × $0.13 = $14.8 million; We assume that the additional cost of mailing the Notice together with the full set of proxy materials is negligible.

[44] In the companion adopting release, we estimated, for PRA purposes, that issuers would spend a total of $897,975 on outside professionals to prepare this disclosure. We also estimated that issuers would spend a total of 8,980 hours of issuer personnel time preparing this disclosure. We estimated the average hourly cost of issuer personnel time to be $125, resulting in a total cost of $1,122,500 for issuer personnel time. This results in a total cost of $2,020,475 for all issuers. The costs for posting the materials on a Web site are included in this calculation.

[45] In the companion adopting release, we estimated, for PRA purposes, that issuers and intermediaries would spend a total of 79,820 hours of issuer and intermediary personnel time maintaining these records. We estimated the average hourly cost of issuer and intermediary personnel time to be $125, resulting in a total cost of $9,977,500 for issuer and intermediary personnel time.

issuers who are responsible for 50% of all current proxy mailings choose mail full sets of proxy materials only to those investors who request them).[46] Investors would have the option to incur no additional cost by either accessing the proxy materials online or requesting paper copies of the materials from the issuer.

E. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- What savings would issuers and other soliciting persons realize if they are required to follow the proposed model? Of those savings, which would be one-time savings and which would be annual savings?
- What added costs would issuers and other soliciting persons incur if they are required to follow the proposed universal Internet availability model? Of those costs, which would be one-time costs and which would be annual costs?
- Are there any other one-time or annual costs or benefits that we should consider?
- Our estimates of the paper-related savings associated with universal internet availability are based on those in our companion adopting release. Are our assumptions about the relevant printing costs and mailing costs, reasonable? In particular, would smaller issuers expect to realize similar savings?
- What proportion of shareholders would be expected to request paper copies? What proportion of beneficial owners would likely request paper copies from intermediaries rather than from issuers? Are there any issuers for which a high rate of paper requests might be anticipated? If so, are there any means, such as surveying shareholder interest in paper copies, that may mitigate such costs?
- Which issuers would choose to mail full sets of proxy materials? Would some issuers mail full sets of proxy materials to some shareholders and notices to others? If so, what proportions of shareholders would be sent each?
- What is the typical cost for obtaining an Internet Web site and posting materials on that Web site? What is the typical cost for establishing an automated system for collecting votes or shareholder voting instructions through the Internet or by telephone? What would be the cost of staffing telephone lines to receive votes or voting instructions?
- Are there other viable means for providing a means to vote on an Internet Web site? If so, what are they, and what would be the cost of providing such voting means?
- What would be the cost of maintaining records of shareholders who have elected to receive paper or e-mail copies of proxy materials for future solicitations? Many issuers and intermediaries, or their agents, already have systems to maintain records of shareholders who have affirmatively consented to electronic delivery, and many intermediaries, or their agents, have systems to maintain records of beneficial owners who have objected to disclosure of their identity to issuers. Considering the fact that such entities already have systems designed to record shareholder preferences, what would the added cost be of maintaining records of shareholders who have elected to receive paper or e-mail copies of proxy materials in the future?
- What costs and benefits would intermediaries incur? Would all of these costs and benefits be passed on to issuers? Are there any one-time or annual costs for intermediaries that we should consider?
- What other benefits and costs would be associated with rules requiring compliance with the universal Internet availability model?

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[47] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[48] and Section 2(c) of the Investment Company Act of 1940[49] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

In a companion release, we are adopting a substantially similar Internet availability model as a voluntary model. The proposed amendments would require all issuers and other soliciting persons to follow the universal Internet availability model for all proxy solicitations, other than those associated with business combination transactions. The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to lower the costs of proxy solicitations, and to improve shareholder communications. Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. We believe that expanded use of electronic communications to replace current modes of disclosures on paper and physical mailings would increase the efficiency of the shareholder communications process. Use of the Internet permits technology developers to enhance a shareholder's experience with respect to such communications. It permits interactive communications at real-time speeds. Improved shareholder communications may improve relationships between shareholders and management. Retail investors may have easier access to management. In turn, this may lead to increased confidence and trust in well-managed, responsive issuers.

The proposal, if adopted, may have the effect of initially raising costs on issuers and other soliciting persons by requiring persons who otherwise would not have followed the model to follow it. The proposal may create other inefficiencies such as reducing shareholder voting participation and increased reliance on broker discretionary voting. We are considering these potential effects, but do not anticipate that they will be significant. Therefore, we are proposing the amendments, but also are requesting comment on these matters. We are also considering the effect of the proposal on competition and capital formation, including the effect that the proposals may have on industries servicing the proxy soliciting process. We do not anticipate any significant effects on capital formation. We also anticipate that some companies whose business

[46] This range of potential home printing costs depends on data provided by Lexecon and ADP. See letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing cost, we assume that 50% of annual report pages are printed in color and 100% of proxy statement pages are printed in black and white. The estimated percentage of shareholders printing at home is derived from Forrester survey data furnished by ADP and adjusted for the reported likelihood that an investor will take extra steps to get proxy materials. Total number of shareholders estimated as above based on data provided by ADP and SIA. See letters from ADP and SIA.

[47] 15 U.S.C. 78w(a)(2).

[48] 15 U.S.C. 78c(f).

[49] 15 U.S.C. 80a–2(c).

model is based on the dissemination of paper-based proxy materials may experience adverse competition effects from the proposal. The proposal may also promote competition among Internet-based information services. We request comment on those effects.

We request comment regarding the degree to which our proposed amendments would have competitively harmful effects on public companies, and how we could best minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects. We also request comment on the effects that the proposed amendments would have on efficiency and capital formation.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Exchange Act that would require issuers and other persons soliciting proxies to follow the universal Internet availability model for all proxy solicitations except for those associated with a business combination transaction.

A. Reasons for the Proposed Action

The proposed amendments are intended to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. We are concurrently issuing an adopting release that creates a voluntary model. We anticipate that increased usage of the model will enhance the ability of investors to make informed decisions and ultimately to lower the costs of proxy solicitations.

B. Objectives

Currently, issuers decide whether to provide shareholders with the choice to receive proxy materials by electronic means. The proposal, if adopted, would provide all shareholders with the ability to choose whether to receive proxy materials in paper, by e-mail or via the Internet. Developing technologies on the Internet should expand the ways in which required disclosures can be used by shareholders. Electronic documents are more easily searchable than paper documents. Users are better able to go directly to any section of the document that they believe to be the most important. They also permit users to more easily manipulate data. It enables users to more easily download data into spreadsheet or other analytical programs so that they can perform their own analyses more efficiently. A centralized Web site containing proxy-related disclosures may facilitate shareholder access to other relevant information such as research reports and news about the issuer.

In addition, encouraging shareholders to use the Internet in the context of proxy solicitations may have the side-effect of improving shareholder communications in other ways. Internet tools, such as chat rooms and bulletin boards, may enhance shareholders' ability to communicate not only with management, but with each other. Such direct access may improve shareholder relations to the extent shareholders have improved access to management.

C. Legal Basis

We are proposing amendments to the forms and rules under the authority set forth in Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Exchange Act, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act, as amended.

D. Small Entities Subject to the Proposed Rules

The proposals would affect issuers that are small entities. Exchange Act Rule 0–10(a) [50] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 public companies, other than investment companies, that may be considered small entities.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[51] Approximately 157 registered investment companies meet this definition. Moreover, approximately 53 business development companies may be considered small entities.

Paragraph (c)(1) of Rule 0–10 under the Exchange Act [52] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2005, the Commission estimates that there were approximately 910 broker-dealers that qualified as small entities as defined above.[53] Small Business Administration regulations define ''small entities'' to include banks and savings associations with total assets of $165 million or less.[54] The Commission estimates that the rules would apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of $165 million or less.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposals would require all issuers, including small entities, to follow the universal Internet availability model. Under the proposed amendments, all issuer and intermediaries would be required to prepare and disseminate a Notice of Internet Availability of Proxy Materials. The required disclosure in the Notice is information that would be readily available to the issuer. Issuers also would be required to post the proxy materials on a publicly accessible Web site, and issuers and intermediaries would be required to provide a means to execute a proxy or provide voting instructions, as applicable, on an Internet Web site. Issuers and intermediaries would be required to provide copies of the proxy materials to requesting shareholders. Issuers and intermediaries also would be required to maintain records to keep track of those shareholders who have made a permanent request for paper or e-mail copies. Issuers also may have to change their Web site and e-mail procedures to comply with the rules designed to safeguard addressing anonymity of persons accessing the Web site and misuse of shareholder e-mail addresses.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

[50] 17 CFR 240.0–10(a).

[51] 17 CFR 270.0–10.

[52] 17 CFR 240.0–10(c)(1).

[53] These numbers are based on a review by the Commission's Office of Economic Analysis of 2005 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[54] 13 CFR 121.201.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation or simplification of disclosure for small entities;
- The use of performance standards rather than design standards; and
- An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives.

The proposed amendments, if adopted, would require all issuers and intermediaries, including small entities, to follow the universal Internet availability model. We believe that in the long run, use of the Internet for shareholder communications not only may decrease costs for all issuers, but also may improve the quality of shareholder communications by enhancing a shareholder's ability to search and manipulate proxy disclosures. However, in the short term, we are considering a tiered system of compliance dates to minimize the burdens on smaller issuers, including small entities. If we adopt tiered compliance dates, we do not anticipate that issuers other than large accelerated filers would be required to comply with the requirements until January 1, 2009. This would provide smaller issuers more time to adjust to the amendments and learn from the experiences of larger filers.

Intermediaries that are small entities would also be subject to the amendments, if they are adopted. We are considering whether such entities should be exempt from the amendments. Such an exemption may create disparity in the way shareholders receive proxy materials. Shareholders owning securities through such intermediaries would not have the ability to choose the means by which they receive proxy disclosures.

We considered the use of performance standards rather than design standards in the proposed rules. The proposal contains both performance standards and design standards. We are proposing design standards to the extent that we believe compliance with particular requirements are necessary. However, to the extent possible, we are proposing rules that impose performance standards to provide issuers, other soliciting persons and intermediaries with the flexibility to devise the means through which they can comply with such standards.

We are requesting comment on whether separate requirements for small entities would be appropriate. The purpose of the amendments is to provide all shareholders with the ability to choose the means by which they receive proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. Exempting small entities would not be consistent with this goal. However, as noted above, we are considering providing more time for small entities to comply with the proposed requirements. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objectives of the proposed rules.

H. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[55] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

[55] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing the amendments pursuant to Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 240.14a–7 [Amended]

2. Amend § 240.14a–7 by removing Note 3 to § 240.14a–7.

3. Amend § 240.14a–16 by:

a. Revising paragraphs (a), (e)(2)(i)(B), (e)(2)(ii), (f)(2)(i), (f)(2)(ii), (h), the introductory text of paragraph (l) and paragraph (l)(2);

b. Adding paragraphs (e)(2)(iii), (f)(2)(iii), (f)(2)(iv), and (j)(5); and

c. Removing paragraph (n).

The revisions and additions to read as follows:

240.14a–16 Internet availability of proxy materials.

(a)(1) A registrant shall furnish a proxy statement pursuant to § 240.14a–3(a) and an annual report to security holders if required by § 240.14a–3(b) to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or

if no meeting is to be held, 40 calendar days or more prior to the date that votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section; provided, that if the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement, annual report to security holders, if required pursuant to § 240.14a–3(b), and form of proxy pursuant to paragraph (f)(3) of this section, the registrant need not comply with the timing requirements of this paragraph (a)(1).

(2) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare and send a Notice to beneficial owners at least 40 calendar days before the meeting date; provided, that if the registrant provides the record holder or respondent bank with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a–3(b) pursuant to paragraph (f)(3) of this section, to be concurrently sent with the record holder's or respondent bank's Notice of Internet Availability of Proxy Materials, the registrant need not comply with the timing requirements of this paragraph (a)(2).

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) The registrant is not soliciting proxy or consent authority, but is furnishing an information statement pursuant to § 240.14c–2;

(ii) The registrant may include a statement on the Notice to educate security holders that no personal information other than the identification or control number is necessary to execute a proxy; and

(iii) If the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement, annual report to security holders, if required under § 240.14a–3(b), and form of proxy pursuant to paragraph (f)(2)(iii) of this section, the Notice of Internet Availability of Proxy Materials need not contain:

(A) A legend relating to security holder requests for copies of the documents; and

(B) Instructions on how to request a copy of the documents.

(f) * * *

(2) * * *

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials;

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials;

(iii) Any other type of security holder communications provided that such transmission includes all of the following documents:

(A) A copy of the proxy statement;

(B) A copy of the annual report to security holders if required by § 240.14a–3(b); and

(C) A form of proxy; and

(iv) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)) and the rules thereunder.

* * * * *

(h) The registrant may send a form of proxy to security holders 10 calendar days or more after the date it first sent the Notice of Internet Availability of Proxy Materials to security holders if:

(1) The form of proxy is accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by § 240.14a–3(b) pursuant to paragraph (f)(2)(iii) of this section, or

(2) The form of proxy is accompanied by a copy of the Notice of Internet Availability of Proxy Materials.

* * * * *

(j) * * *

(5) A registrant need not comply with paragraphs (j)(1) and (j)(2) of this section if it sends a copy of the proxy statement, annual report to security holders if required by § 240.14a–3(b) and form of proxy pursuant to paragraph (f)(3)(ii) of this section.

* * * * *

(l) A person other than the registrant soliciting proxies shall follow the requirements imposed on registrants by this section, provided that:

* * * * *

(2) A soliciting person other than the registrant must send its Notice of Internet Availability of Proxy Materials by the later of:

(i) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date that votes, consents, or authorizations may be used to effect the corporate action; or

(ii) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders; provided, that if the soliciting person other than the registrant concurrently sends the Notice of Internet Availability of Proxy Materials with a copy of the proxy statement and form of proxy pursuant to paragraph (f)(3) of this section, the soliciting person other than the registrant need not comply with the timing requirements of this paragraph (l)(2)

* * * * *

4. Amend § 240.14b–1 by:

a. Revising the introductory text of paragraph (d); and

b. Adding paragraph (d)(1)(iii).

The revision and addition read as follows.

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a–16(d), the broker or dealer shall:

(1) * * *

(iii) The broker or dealer need not comply with the deadlines set forth in paragraphs (d)(1)(i) and (d)(1)(ii) of this section, if the registrant or other soliciting person provides the broker or dealer with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a–3(b), pursuant to § 240.14a–16(f)(3)(ii), to be concurrently sent with the broker's or dealer's Notice of Internet Availability of Proxy Materials.

* * * * *

4. Amend § 240.14b–2 by:

a. Revising the introductory text of paragraph (d); and

b. Adding paragraph (d)(1)(iii).

The revision and addition read as follows.

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a–16(d), the bank shall:

(1) * * *

(iii) The bank need not comply with the deadlines set forth in paragraphs (d)(1)(i) and (d)(1)(ii), if the registrant or other soliciting person provides the bank with copies of the proxy statement and annual report to security holders, if required pursuant to § 240.14a–3(b), pursuant to § 240.14a–16(f)(3)(ii), to be concurrently sent with the bank's Notice of Internet Availability of Proxy Materials.

* * * * *

6. Amend § 240.14c–2 by revising paragraph (d) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(d) A registrant may transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16; provided, however, that the registrant shall revise the information required in the Notice of Internet Availability of Proxy Materials, including changing the title of that notice, to reflect the fact that the registrant is not soliciting proxies for the meeting.

7. Amend § 240.14c–3 by revising paragraph (d) to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(d) A registrant may furnish an annual report to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–16.

Dated: January 22, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–1184 Filed 1–26–07; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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National security industrial base regulations:

Defense priorities and allocations system regulation; technical corrections; published 1-29-07

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Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program—

Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, terrorist attacks; published 12-28-06

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Air pollutants; hazardous; national emission standards:

Asbestos management and control; published 11-28-06

Air quality implementation plans; approval and promulgation; various States:

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Cathode ray tubes and mercury-containing equipment; published 7-28-06

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Excess stock restrictions and retained earnings requirements; published 12-28-06

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 159/P.L. 110–1

To redesignate the White Rocks National Recreation Area in the State of Vermont as the ''Robert T. Stafford White Rocks National Recreation Area''. (Jan. 17, 2007; 121 Stat. 3)

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§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[5] Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[8] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
*1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[9] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.